Supreme Court, U.S.
FILED

011823 JUN 10 2002

No. _____

In the Supreme Court of the United States

GOVERNOR MARK S. SCHWEIKER, ET AL.,
Appellants

v.

RICHARD VIETH, ET AL.,
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

Whether Pennsylvania's congressional redistricting plan, in which no district is more than ten persons above or below the theoretically ideal district population, violates the constitutional guarantee of one person, one vote?

PARTIES TO THE PROCEEDING

The appellants are Mark S. Schweiker, the Governor of Pennsylvania; C. Michael Weaver, the Secretary of the Commonwealth[1]; and Richard Filling, the Commissioner of Pennsylvania's Bureau of Commissions, Elections and Legislation.

Those appellees who, like the appellants, are defendants in the District Court, are Robert C. Jubelirer, the Lieutenant Governor of Pennsylvania and President of the Pennsylvania Senate; and Matthew J. Ryan, Speaker of the Pennsylvania House of Representatives.

Those appellees who are plaintiffs in the District Court are Richard and Norma Jean Vieth and Susan Furey.

Appellee Republican Caucus of the Pennsylvania House of Representatives is an intervenor in the District Court. In addition, Robert J. Mellow, a Pennsylvania state senator, has moved to intervene in the District Court, and his motion was pending when this statement was filed.

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[1]Mr. Weaver has been substituted for his predecessor, Kim Pizzingrilli, pursuant to Supreme Court Rule 35.3.

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The District Court's opinion of April 8, 2002 is reported at 195 F.Supp.2d 672 and is reprinted in the appendix to this Jurisdictional Statement ("J.S. App.") at 1a. The District Court's opinion of February 22, 2002 is reported at 188 F.Supp.2d 532 and is reprinted at J.S. App. 20a.

STATEMENT OF JURISDICTION

This is an appeal from an injunction issued by a three-judge district court, over which the Court has jurisdiction pursuant to 28 U.S.C. § 1253. The District Court's order was entered on April 8, 2002. Appellants filed a notice of appeal on April 11, 2002, and are filing this Jurisdictional Statement within sixty days of that date.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article I, § 2 of the United States Constitution provides in relevant part that "[t]he House of Representatives shall be composed of members chosen ... by the people of the several States."

2. Section 1 of Pennsylvania's Act 2002-1 ("Act 1"), *to be codified at* Pa. Stat. Ann., tit. 25, § 3595.1(Purdon), is reprinted at J.S. App. 54a. It is also available in 2002 Purdon's Pa. Leg. Serv. No. 1, and on WestLaw at PA ST 25 P.S. § 3595.1.

3. Pennsylvania's Act 2002-34 ("Act 34"), *to be codified at* Pa. Stat. Ann., tit. 25, §§ 3595.101 through 3595.501(Purdon), is reprinted in relevant part at J.S. App. 69a. It is also available on WestLaw at PA ST 25 P.S. § 3595.101 *et seq.*

STATEMENT OF THE CASE

This case arises out of the congressional redistricting plan adopted by the Pennsylvania legislature in the wake of the 2000 decennial census. Three individuals, to whom we will refer collectively as "the voters," claim that this redistricting plan offends the Constitution. They brought this action pursuant to 42 U.S.C. § 1983, seeking declaratory and injunctive relief against the Governor of Pennsylvania and other state officials.

1. As a result of the 2000 decennial census, Pennsylvania's congressional delegation was reduced from twenty-one to nineteen representatives. J.S. App. 2a. The census reported that Pennsylvania's total population was 12,281,054 persons, so that the "ideal" population for each of the Commonwealth's nineteen congressional districts is either 646,371 or 646,372 persons. J.S. App. 1a, 16a. In response, the Pennsylvania General Assembly enacted Act 2002-1 ("Act 1"). *See* J.S. App. 3a, 54a. Act 1 created nineteen congressional districts. None of these congressional districts has a population which is more than ten *persons* above or below the "ideal" population; and Act 1's overall deviation from absolute equality — that is, the difference between the most and least populous districts — is nineteen persons, or 0.003%. J.S. App. 3a.

In achieving this result, Act 1 split six of Pennsylvania's 9,427 voting precincts. J.S. App. 16a-17a. Splitting voting precincts imposes both financial costs and administrative burdens on local election officials who must obtain additional voting machines, customize ballots, train officials and count ballots; it also increases the potential for voter and candidate confusion. J.S. App. 9a, 16a. To iron out the last 0.003% by which Act 1 deviates from the ideal — that is, to bring the

congressional districts into absolute equality, while remaining within Act 1's general contours — would have required splitting an additional twenty precincts, for a total of twenty-six. J.S. App. 17a (Yohn, J., dissenting). *Accord* J.S. App. 10a (acknowledging that Act 1's zero-deviation "twin" splits more precincts than Act 1).

2. The voters brought this action in the Middle District of Pennsylvania, which convened a three-judge court pursuant to 28 U.S.C. § 2254. In the District Court, the voters raised two principle claims: first, that the congressional districts drawn by Act 1 represented an impermissible partisan gerrymander, in violation of the principles recognized in *Davis v. Bandemer*, 478 U.S. 109 (1986); and second, that Act 1's districts were not precisely equal and therefore violated the Constitution's guarantee of one person, one vote. J.S. App. 25a-26a.

The District Court first dismissed the voters' partisan gerrymandering claim, holding that it did not meet *Bandemer's* threshold requirement of a discriminatory effect.[2] J.S. App. 47a. The District Court then held an evidentiary hearing on the one person, one vote claim.

On April 8, 2002, the District Court issued a decision striking down Act 1 on one person, one vote grounds. J.S. App. 13a. In reaching this decision, the District Court applied the two-part test outlined in *Karcher v. Daggett*, 462 U.S. 725 (1983). Accordingly, the District Court first considered whether the voters had

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[2]At the same time, the District Court dismissed claims based on the Privileges and Immunities Clause, the First Amendment, and Section 1983, for failure to state a claim, and dismissed all claims against the Commonwealth itself on the basis of the Commonwealth's Eleventh Amendment immunity. J.S. App. 30a, 48a-50a.

shown that the population differences among Act 1's districts could have been reduced or eliminated, and concluded that they had. J.S. App. 8a; *see Karcher*, 462 U.S. at 730.

The District Court thus proceeded to the second part of the *Karcher* test: whether the deviations from absolute equality in Act 1 were justified as necessary to achieve some legitimate state objective. J.S. App. 8a; *see Karcher*, 462 U.S. at 440-41. All three members of the District Court recognized that the justification offered by the appellants — avoiding the splitting of voting precincts — is a legitimate state objective which could justify the nineteen-person deviation in Act 1. J.S. App. 9a, 16a.

Nevertheless, by a divided vote, the district court rejected this justification on the ground that it was not "genuine." J.S. App. 9a. The majority judges first noted that it was "possible to draw a congressional district map with zero deviation and no precinct split." *Ibid.* They reasoned that "[i]f Defendants truly wanted to avoid splitting precincts, they would have done so by enacting a zero deviation map that did not split *any* precincts." *Ibid.* (emphasis in original). Since Act 1 nevertheless did split six precincts, the majority judges concluded that the proffered justification was a "mere pretext" which lacked "sincerity." *Ibid.* On this basis, the majority judges held that the nineteen-person deviation in Act 1 violated the guarantee of one person, one vote. The District Court thus enjoined the implementation of Act 1; ordered the Pennsylvania General Assembly to enact a new redistricting plan and submit it to the court for its review and approval; and retained jurisdiction pending issuance of a final order. J.S. App. 13a-14a.

Judge Yohn dissented. J.S. App. 15a-19a. He would have held that the population deviations in Act 1 were justified as necessary to further Pennsylvania's

legitimate interest in avoiding the splitting of voting precincts, "particularly when the overall population deviation is only nineteen." J.S. App. 16a. He noted that no one, "even with the benefit of hindsight, submitted a plan following the general contours of Act 1 which does not involve the splitting of more than six voting precincts"; and that alternative plans which did not follow "the general contours of Act 1" failed to give the proper deference to the state "goals, policies and preferences inherent in Act 1." J.S. App. 18a. He would therefore have held that the Act 1's deviations from perfect equality did not violate the one person, one vote rule.

3. Appellants appealed the District Court's decision to this Court.[3] The District Court stayed its injunction pending the disposition of this appeal,[4] and Pennsylvania held its primary election on May 21, using the congressional districts drawn by Act 1. In the meantime, the Pennsylvania General Assembly enacted a revised congressional redistricting plan, known as Act 2002-34 ("Act 34") which the Governor signed into law on April 18, 2002. *See* J.S. App. 69a. The District Court has retained jurisdiction to decide whether Act 34 remedies

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[3]Two other appeals are pending in this case. Lieutenant Governor Robert Jubelirer and Speaker Matthew Ryan have also appealed from the District Court's injunction, and their jurisdictional statement is due by June 10, 2002. Earlier, the Republican Caucus of the Pennsylvania House of Representatives appealed from a discovery order issued by the District Court, and their appeal is docketed at No. 01-1713.

[4]The District Court, by order entered on April 12, 2002, initially declined to stay its order, and the appellants and other defendants applied for a stay to Justice Souter as Circuit Justice for the Third Circuit. While that application was pending, the District Court granted a renewed motion for a stay, by order entered April 23, 2002. *See* J.S. App. 87a.

the constitutional violations which it found in Act 1, J.S. App. 87a-88a; and — the District Court permitting — Act 34 will govern the congressional elections of 2004. J.S. App. 86a.

THIS CASE PRESENTS SUBSTANTIAL FEDERAL QUESTIONS WHICH THE COURT SHOULD ADDRESS

I. The Court Should Clarify the Standard for Deciding One Person, One Vote Claims in Cases Where the Variance from Absolute Equality Approaches, but Is Not Quite, Zero.

When the Court entered the field of congressional redistricting in the 1960's, gross disparities among district populations were the norm. As Justice White pointed out in his dissent in *Karcher v. Daggett*, 462 U.S. 725 (1983),

> the plaintiffs in *Wesberry* [*v. Sanders*, 376 U.S. 1 (1964)] were voters in a congressional district ... that was three times larger than Georgia's smallest district and more than double the size of and average district. ... Georgia was not atypical; congressional districts throughout the country had not been redrawn for decades and deviations of over 50% were the rule.

Karcher, 462 U.S. at 766-67 (White, J., dissenting). The States, however, spurred by the Court's decisions and aided by advances in the technology of redistricting, have long since eliminated gross malapportionment of this kind. In each round of redistricting litigation — inevitably tied to the decennial census — the deviations from population equality confronting the Court have been dramatically lower than those in the round before. *See,*

e.g., *White v. Weiser*, 412 U.S. 783 (1973) (maximum population variance of 4.13%); *Karcher v. Daggett*, *supra* (maximum population variance of 0.6984%).

Despite this trend, the Court in *Karcher*, over the strong dissent of four Justices, declined to identify any point beyond which minor population variances would have no constitutional significance.

> [W]e have required that absolute population equality be the paramount objective of apportionment ... in the case of congressional districts.... We ... reaffirm that there are no *de minimus* population variations, which could practicably be avoided, but which nonetheless meet the standard of Art. I, § 2 without justification.

Id., at 733-34; *cf. id.*, at 765-83 (White, J., dissenting). *Karcher*, however, did not deprive the States of all flexibility in congressional redistricting. Rather, *Karcher* emphasized that, while minor variations cannot be *ignored*, they can nevertheless be *justified*.

> [W]e are willing to defer to state legislative policies, so long as they are consistent with constitutional norms, even if they require small differences in the population of congressional districts. ... Any number of consistently applied legislative policies might justify some variance....

Id. at 740. Such policies might include, for example, "making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives." *Ibid.*

This case continues, and perhaps culminates, the trend of ever-decreasing population differences. The population variance in Pennsylvania's redistricting scheme — 0.003%, representing nineteen persons — approaches, although it is not quite, zero; and it is less than one-two hundredth of the variance in the New Jersey scheme which the Court considered in *Karcher*. Moreover, the further advances in redistricting technology which have occurred since the 1990 census, and the wide dissemination of that technology through the Internet[5] and other vehicles, make it likely that Pennsylvania's redistricting scheme represents the norm for the future. The Court should therefore take this opportunity to provide guidance to the States and the lower courts on how *Karcher's* principles should properly be applied to state redistricting plans which fall short of "absolute population equality" by only minuscule amounts.

II. The District Court Misapplied the Principles of *Karcher v. Daggett*.

The appellants, following the analysis set forth in *Karcher*, argued to the District Court that the minimal population variances in Pennsylvania's redistricting scheme were justified by the Commonwealth's interest in avoiding the splitting of voting precincts. They explained that evening out these variances would require splitting an additional twenty precincts.

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[5] *See, e.g.*, the web sites maintained by the Census Bureau at www.census.gov/clo/www/redistricting.html; and by the National Conference of State Legislatures at www.ncsl.org/programs/legman/elect/redist.htm. For a compilation of state and other government web sites, *see* the Purdue University web site at http://thornplus.lib.purdue.edu/govdocs/redistricting.html.

The District Court agreed that "the desire to avoid splitting precincts is a legitimate state interest which could justify a nineteen person deviation." J.S. App. 8a-9a. Nor was there any question that these specific variances were in fact necessary to avoid further precinct splits; as the dissenting judge pointed out, "neither party, even with the benefit of hindsight, submitted a plan following the general contours of Act 1 which does not involve the splitting of more ... voting precincts." J.S. App. 18a (Yohn, J., dissenting). *Accord* J.S. App. 10a (acknowledging that Act 1's zero-deviation "twin" splits more precincts than Act 1).

Nevertheless, the majority judges rejected the appellants' justification. J.S. App. 9a. They relied on the idea that, disregarding Act 1 and starting from scratch, it is "possible" to draw a map which contains neither population variances nor precinct splits. *Ibid; see also* J.S. App. 18a (Yohn, J., dissenting) (alternative plan does not follow general contours of Act 1). From this, they reasoned that "[i]f Defendants truly wanted to avoid splitting precincts, they would have done so by enacting" just such a map, J.S. App. 9a, and thus concluded that the appellants' proffered justification was a "mere pretext" which lacked "sincerity" and was not "genuine." *Ibid.*

The District Court, however, misapplied *Karcher* in several respects. First, the District Court improperly focused, not on the specific population variances which actually exist in Act 1 and on whether those variances might be justified, but on alternative redistricting schemes which were theoretically "possible" for Pennsylvania to adopt, without regard to the contents of Act 1. *Karcher* itself, however, makes it clear that this focus is misplaced.

Karcher prescribes a two-stage analysis. At the first stage, a court must decide whether the State has

eliminated population variances to the maximum extent practicable; and at this stage, the court is indeed free to consider alternative redistricting schemes, whether or not those schemes are similar to that which the State actually adopted. *See Karcher*, 462 U.S. at 738-39.

The next step, however, is to decide whether the variances in the State's plan can be justified on the basis of some legitimate state interest, and this necessarily requires the defending State — and the reviewing court — to focus on the concrete provisions of the existing plan, rather than on theoretically possible alternatives. *See id.*, at 730 ("the State must justify *each* variance, however small") (emphasis added). To satisfy this second stage of the inquiry, *Karcher* requires only that a State show "*with some specificity* that a *particular* objective required the *specific* deviations in its plan...," *id.*, at 741 (emphases added); it does not require the State to negate every conceivable alternative plan which might be contrived.

The District Court, however, invoked theoretically "possible" alternatives at *both* stages of its inquiry. The District Court thus not only improperly conflated the first and second stages of the *Karcher* inquiry, but also deprived Pennsylvania of the very flexibility which *Karcher* intended to preserve. In this case, Pennsylvania did exactly what *Karcher* requires — it showed that its nineteen-person population variance furthered a legitimate state interest in not splitting precincts — and that should have been the end of the matter.

The District Court's second, and related, error, was to fail to give appropriate deference to the state "goals, policies and preferences" embodied in Act 1. J.S. App. 18a (Yohn, J., dissenting). The Court has repeatedly emphasized that "a court must defer to the legislative judgment the [redistricting] plans reflect." *Upham v. Seamon*, 456 U.S. 37, 40 (1982).

> From the beginning, we have recognized that reapportionment is primarily a matter for legislative consideration and determination.... [A] federal court ... should follow the policies and preferences of the State, as expressed in ... the reapportionment plans proposed by the state legislature.

White v. Weiser, 412 U.S. at 794. A federal court must extend this deference even where it is fashioning a remedy for a constitutional violation it has already found, *see Whitcomb v. Chavis*, 403 U.S. 124, 160-61 (1971); and this deference is all the more appropriate where, as here, the court is deciding whether such a violation exists in the first place.

The District Court was thus quite wrong to invalidate Act 1 merely because it was, in the District Court's opinion, inferior to some other scheme which it would have been "possible" for Pennsylvania to adopt. *See Karcher*, 462 U.S. at 738-39 (in deciding whether variances are justified, court should consider degree to which alternative plans differ from plan actually adopted by State). *Accord, e.g., Abrams v. Johnson*, 521 U.S. 74, 100 (1997) (remedy for minor population variances would be not wholesale revision, but "very minor changes ... a few shiftings of precincts — to even out districts with the greatest deviations").

Third, the District Court's reliance on the idea of "pretext," J.S. App. 9a, imports into the *Karcher* analysis an inquiry into the subjective motives of the legislature which has no basis in either *Karcher* or the Constitution. The courts inquire into legislative motives only where — as in allegations of race-based redistricting — an illicit motive is itself an element of the constitutional violation, *see, e.g., Easley v. Cromartie*, 532 U.S. 234 (2001); and

even then the difficulties of such inquiries are proverbial.[6] Thus, "[i]t is a familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive." *United States v. O'Brien*, 391 U.S., 367, 383 (1968), *quoted in Turner Broadcasting System v. FCC*, 512 U.S. 622, 652 (1994).

Karcher does not depart from this general rule. *Karcher* speaks not of motives, but of "legitimate state objective[s]." *Id.*, at 740. A state objective is either legitimate or it is not; and statutory provisions either further that objective or they do not. As the District Court acknowledged, Pennsylvania's objective of not splitting precincts is indeed legitimate, J.S. App. 9a, 16a; and the population variances in Act 1 do indeed further that objective, J.S. App. 10a, 18a. Once again, that should have been the end of the matter; and the District Court digression into issues of legislative "sincerity," J.S. App. 9a, was an error.

In any event, the District Court's analysis of legislative motive is unconvincing even on its own terms. The District Court thought that, since Act 1 had already

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[6] "[I]t is worth pointing out, as we have on so many prior occasions, that it is often difficult or impossible for any court to determine the sole or dominant motivation behind the choices of a group of legislators. ... [E]ach of the members ...has his or her own agenda and interests — particularly in the complicated process of redistricting, in which every decision inevitably has sharp political impact. ... In these circumstances, rarely can it be said that a legislature ... operating under a broad mandate made a decision motivated solely by a single concern, or even that a particular purpose was the dominant or primary one." *Bush v. Vera*, 517 U.S. 952, 1014 n.9 (1996) (Stevens, J., dissenting) (citations and internal quotation marks omitted).

split six precincts, the objective of not splitting twenty more was not a "genuine" justification but a "mere pretext" that lacked "sincerity." J.S. App. 9a. But redistricting legislation, even more so than other legislation, is a complex structure of tradeoffs and compromises in which no one consideration is likely to trump all other considerations all of the time. Simply because the Pennsylvania legislature was prepared to accept a limited number of split precincts, it by no means follows that it did not genuinely desire to minimize that number. *See* J.S. App. 17a-18a (Yohn, J., dissenting) ("one of the prevailing themes ... was to minimize the number of precinct incursions," quoting testimony of Act 1's cartographer).

Finally, the District Court held Pennsylvania to an unreasonable standard of perfection which is quite at odds with the teachings of *Karcher*. The District Court acknowledged that

> [t]he Court [in *Karcher*] made clear that the burden borne by the State varies inversely with the magnitude of the population deviation. ... That is, the greater the deviation, the more compelling the government's justification must be.

J.S. App. 8a. As the dissenting judge noted, "[i]t would seem therefore that a nineteen person deviation ... would require a justification of the lowest end of the 'justification' scale." J.S. App. 16a n.6. While acknowledging this teaching in principle, however, the District Court disregarded it in practice. Act 1's nineteen-person variance from perfection has no real effect on attaining the constitutional goal of equal representation for Pennsylvania's 12,000,000 people; and the District Court should therefore have required only the most minimal showing that the nineteen-person variance

rationally furthers some legitimate state interest. Pennsylvania more than satisfied this standard, but the District Court nevertheless struck down Act 1 because, in the District Court's opinion, it was "possible" for Pennsylvania to have adopted a plan which *better* furthered the Commonwealth's interests. J.S. App. 9a. This is not consistent with *Karcher*.

III. The District Court's Decision Conflicts with How Other Courts Have Applied *Karcher* to Similar Situations.

The District Court's decision is unusual, not only in its result — we have found no other case striking down a redistricting statute which came so close to mathematical perfection — but in its lack of deference to the state policies and preferences embodied in the state plan under review. Other courts, even when forced to devise their own remedies for unconstitutional redistricting laws, have adhered far more closely to the Court's teachings in *Karcher* and other cases. *See, e.g., Johnson v. Miller*, 922 F.Supp. 1556, 1561-63 & n.7 (S.D. Ga. 1995)(three-judge court), *aff'd sub nom. Abrams v. Johnson*, 521 U.S. 74 (1997) (court adopted plan with some population deviation in order to, *inter alia*, minimize the number of split precincts); *Smith v. Clark*, 189 F.Supp. 2d 529, 539 & n.5 (S.D. Miss. 2002) (three-judge court) (same, no precinct splits); *Turner v. Arkansas*, 784 F.Supp. 585, (E.D. Ark. 1991) (three-judge court) (court adopts plan which most nearly approximates plan adopted by state legislature, even though other plans had lower population variances).

The Court should therefore resolve the conflict which the District Court's decision creates with the decision of other courts which have applied *Karcher* to similar situations.

CONCLUSION

The Court should summarily reverse the district court's order, or in the alternative should note probable jurisdiction and set this appeal for plenary consideration.

Respectfully submitted,

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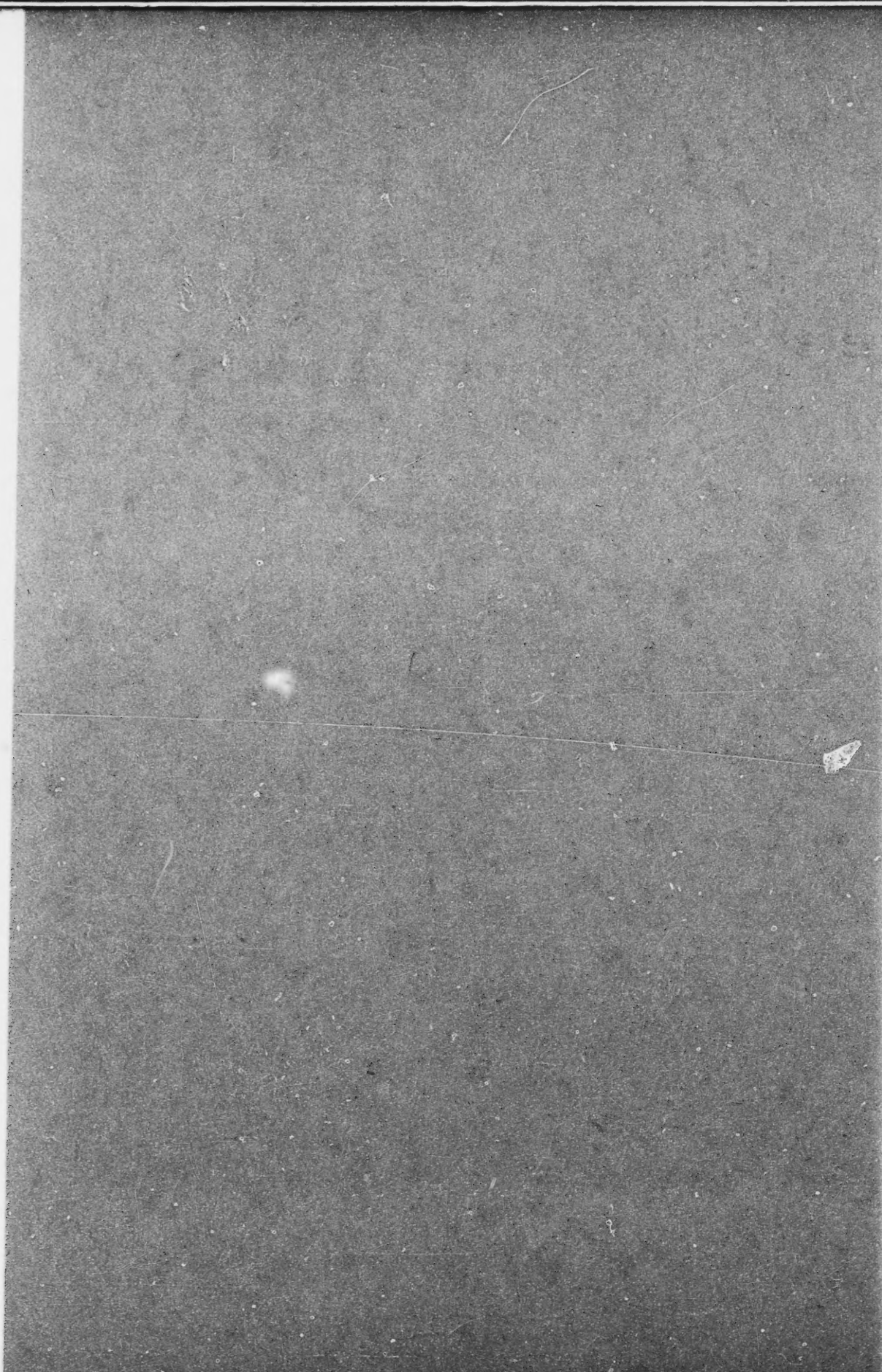
June 10, 2002

APPENDIX



IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, NORMA JEAN VIETH, and SUSAN FUREY,	**: Civil No. 1:CV-01-2439**
Plaintiffs	**: NYGAARD, Circuit Judge**
v.	**: YOHN, District Judge**
COMMONWEALTH OF PENNSYLVANIA, *et al.*,	**: RAMBO, District Judge**
Defendants	**:**

OPINION AND ORDER OF THE COURT

PER CURIAM

In our previous order of February 22, 2002, we dismissed several claims brought by the Plaintiffs which challenged the constitutionality of Pennsylvania Senate Bill 1200 (Act 1), the congressional redistricting plan enacted by the General Assembly and signed into law on January 7, 2002. On March 11-12, 2002, we held a hearing on the Plaintiff's sole remaining claim: Act 1 violates the constitutional principle of "one-person, one vote." Upon conclusion of this hearing, we ordered the parties to file proposed findings of fact and conclusions of law.

I. Background

The 2000 Census reported that Pennsylvania's total population was 12,291,054 persons. As a result of this population figure, and in accordance with Article I,

Section 2 and the Fourteenth Amendment to the United States Constitution, Pennsylvania's congressional delegation was reduced from twenty-one to nineteen representatives in Congress.[1]

The loss of two congressional seats made it necessary to increase the size of the existing districts by approximately 100,000 persons. Additionally, because of shifts in population, some congressional districts were over-populated while some were well under the ideal population. Therefore, significant changes were made to the existing congressional districts.

Pennsylvania Senate Bill 1200 was introduced by Senators Brightbill and Lemmond on November 16, 2001. Senators Brightbill and Lemmond are members of the Republican Party. A competing plan, Senate Bill 1241 was introduced by Democratic state senators Mellow, O'Pake, Wagner, Musto, Kasunic, Fumo and Stout. On December 10, 2001, the Senate considered amendments to Senate Bill 1200. A Republican amendment was ultimately agreed to. The version of Senate Bill 1200 that eventually passed the Senate contained a population deviation of twenty-four persons.

After an amendment by the Pennsylvania House of Representatives, the chamber passed Senate Bill 1200 on December 12, 2001. The version of Senate Bill 1200 that

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[1]Article I, Section 2 states in pertinent part: "The House of Representatives shall be composed of Members chosen every second year by the People of the several States, and the Electors of each State shall have Qualifications requisite for Electors of the most numerous Branch of the State Legislature." U.S. Const. art I, § 2. Section 2 of the Fourteenth Amendment states in pertinent part: "Representatives shall be apportioned among the several states according to their representative numbers, counting the whole number of persons in each state." U.S. Const. amend. XIV, § 2.

passed the House had a total population deviation of nineteen persons.[2] It also maintained two minority-majority districts in the Philadelphia area, created one open seat in the southeastern part of the Commonwealth and paired two Democratic incumbents in the same district. One Democratic incumbent was paired against one Republican incumbent.

The Senate refused to concur in the amendments to Senate Bill 1200 offered by the House of Representatives. A Conference Committee was appointed and a plan was eventually devised that contained a nineteen person deviation. This Conference Committee Report on Senate Bill 1200 was passed by the Senate on January 3, 2002 and by the House of Representatives later the same day. It was signed into law on January 7, 2002.

In its final form, Act 1 created nineteen congressional districts with a total population deviation of nineteen. Although Act 1 did maintain two "minority-majority" districts in Philadelphia, it created three districts in which six incumbent congressman would have to run for re-election against each other. Of these pairings, two of the districts required Democratic congressmen to run against each other and one district required an incumbent Democratic representative to run against an incumbent Republican representative. These pairings of incumbent congressman permitted the creation of an open congressional district in the southeastern part of the Commonwealth. In contrast to its treatment of Democratic incumbents, no Republican congressmen are forced to run against each other.

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[2]The term "deviation" as used in this opinion refers to the differences in population between the least and most populated districts under the redistricting plan.

Moreover, Act 1 splits eighty-four local governments, including twenty-five counties, fifty-nine cities, boroughs or townships, as well as forty-one wards. It also splits six voting precincts.

II. Analysis

A. Population Deviation

The United States Constitution requires that each congressional district in a state contain equal population. *See Wesberry v. Sanders*, 376 U.S. 1, 18, 84 S.Ct. 526 (1864) (holding that Art. I,§ 2 of the Constitution requires that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's."). The Supreme Court has been exceedingly clear in requiring lower courts to balance population among the districts with precision. *See Karcher v. Daggett*, 462 U.S. 725, 734, 103 S.Ct. 2653 (1983) ("there are no *de minimis* population variations, which could practicably be avoided, but which nonetheless meet the standard of Art. I, § 2 without justification."); *Kirkpatrick v. Preisler*, 394 U.S. 526, 531, 89 S.Ct. 1225 (1969) ("[T]he 'as nearly as practicable' standard requires that the State make a good-faith effort to achieve precise mathematical equality. Unless population variances among congressional districts are shown to have resulted despite such effort, the State must justify each variance, no matter how small."). In a challenge to a congressional redistricting plan, the plaintiff bears the burden of proving that the differences in district-to-district population could have been reduced or eliminated altogether by a "good-faith effort to draw districts of equal population." *Karcher*, 462 U.S. at 730.

We find that the Plaintiffs have met their burden in this case. First, it is undisputed that Act 1 has a deviation in population of nineteen persons between the

most populated and least populated districts. Therefore, unless these deviations were unavoidable or resulted despite a good faith effort to draw districts of equal population, then the Defendants must prove a legitimate justification for the deviations. The evidence conclusively demonstrates that this population deviation was avoidable. Plaintiffs presented into evidence "Alternative Plan 4" which had a minimum possible deviation - districts that differ by only one person. Additionally, this plan achieves zero deviation without splitting any precincts among congressional districts and splits fewer municipalities than Act 1. Witnesses presented by both parties testified that it would have been relatively easy to take any plan or map and reach a point of zero population deviation.[3] Indeed, the Defendants themselves submitted

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[3]The Defendants suggest that "Alternative Plan 4" cannot be considered because it was never before the legislature. They argue that Plaintiffs must meet their burden under the first prong of the *Karcher* test only by relying on maps and/or redistricting plans that have a lower population deviation than the one enacted and that were presented to the legislature. We disagree. Although in *Karcher*, the legislature had before it other plans with less deviation, the Court never endorsed such a requirement. Instead, the Court focused on whether a plan with less deviation was possible. In this case, the Plaintiffs have provided four plans that had less deviations than Act 1. If we were to adopt the limited analysis suggested by the Defendants, we would be adopting a view that would isolate grossly disproportionate plans from constitutional scrutiny on the sole basis that such plans constitute the plan with the least deviations *available*. *Karcher* is wrought with references indicating that the least deviation *possible* is that which should govern the analysis. *See* 462 U.S. at 727 (affirming the three-judge panel's conclusion that the New Jersey plan violated the one-person, one-vote requirement "because the population deviations among districts, although small, were not the result of good-faith effort to achieve *population equality*) (emphasis added); 462 U.S. at 732-33

a map with zero population deviation. Thus, the nineteen person deviation in Act 1 was avoidable.

Nor can the deviation contained in Act 1 be excused based upon the good faith of the Defendants. Indeed, we find that the testimony of defense witness Dr. John Memmi satisfies the Plaintiff's burden here. Dr. Memmi testified that he was in charge of drawing up the map that became Act 1. He further stated that he drew the map under the direct supervision of the Republican leadership. He began manipulating the map in order to get the deviations lower. However, once he reached the point of a nineteen-person deviation, he was told to stop manipulating the map:

Q: Actually, what I would like to know is if there was a number that anybody said you could stop once you got to number nineteen or number 18?

A: Every move that was made was done under the supervision of my supervisors. And at the time, the team involved the House Republican Caucus Redistricting crew, some members thereof, the

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(stating that the Court requires that "*absolute population equality* be the paramount objective of apportionment . . . in the case of congressional districts," but not necessarily for other forms of redistricting) (emphasis added); 462 U.S. at 730 (stating that under the first prong of the analysis "the court must consider whether the population differences among districts could have been reduced or eliminated altogether by a food-faith effort to draw districts of *equal population*") (emphasis added); 462 at 731 ("Adopting any standard other than *population equality*, using the best census data available . . . would subtly erode the Constitution's ideal of *equal representation.*") (emphasis added). In this case, the evidence indicates that a zero-deviation map was possible, and thus should govern our analysis under *Karcher's* first prong.

> Senate Republican Caucus Redistricting team, members thereof. And the Supervisors sat there while Bill Shower and I — Bill is a gentleman with the House Republican Caucus. They observed every census block move that we made. And we continued to make moves, and were monitoring the overall range. I should say we all monitored it, of course, but the supervisor's the one whose monitoring counted. And when the districts were at nineteen overall range, they said that is sufficient.

Tr. Vol 3 at page 276. No other witnesses were called by the Defendants to explain why Dr. Memmi was told to stop manipulating the map.

We find this testimony to be in clear violation of the Supreme Court's express goal of getting as close as possible to zero deviation when drawing congressional districts. *See Karcher*, 462 U.S. at 734, 103 S.Ct. at 2660. Therefore, we find that the Defendants did not put forth a good-faith effort to draw districts of equal population.

It has been suggested that the deviation from absolute numerical equality present in Act 1 is too trivial or minute to rise to a constitutionally significant level. While it is true that the deviation contained in Act 1 is small, *Karcher* specifically holds that "there are no *de minimis* variations which could practically be avoided, but nonetheless meet the standard of Art. I, § 2 without justification." 462 U.S. at 734, 103 S.Ct. 2660. Thus, we hold that the population deviation in Act 1, even though relatively small, enables the Plaintiffs to satisfy *Karcher's* first prong and shifts to the Defendants the burden of proving justification.

B. Justification

Because the Plaintiffs have met their burden under *Karcher*, the Defendants must now prove that this population deviation was "necessary to achieve some legitimate goal." 462 U.S. at 731, 103 S.Ct. at 2658 (*citing Kirkpatrick*, 394 U.S. at 530, 89 S.Ct. at 1228; *Swann v. Adams*, 385 U.S. 440, 443-444, 87 S.Ct. 569, 571-72 (1967)). While *Karcher* did not specify how the State might meet its burden in step two, it did give several examples of legislative policies that might justify some variance among the populations of the State's various congressional districts. Specifically, the Court stated that "making districts compact, respecting municipal boundaries, preserving the cores of prior districts and avoiding contests between incumbent Representatives" may legitimate minor population deviations among congressional districts. The Court also made clear that the burden borne by the State varies inversely with the magnitude of the population deviation. *Id.* at 741, 103 S.Ct. 2664. That is, the greater the deviation, the more compelling the government's justification must be.

Defendants contend that the population variances in Act 1 are justified by a desire to avoid splitting voting precincts.[4] Both parties agree that splitting precincts creates additional costs and work for county election officials, in registering voters and in counting ballots. Moreover, we recognize that split precincts increase the potential for voter disorientation and candidate confusion. Therefore, to the extent that such justification is genuine, we acknowledge that the desire to avoid splitting precincts is a legitimate state interest which

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[4]While the Defendants have suggested various other state interests which may have justified Act 1, since the focus of our inquiry in the justification phase is population deviation, the only justification submitted which deals with that issue is the policy objective of limiting voter precinct splits. Therefore, we will confine our analysis to this issue.

could justify a nineteen person deviation.

We find, however, that the Defendants' arguments on this point are a mere pretext. Specifically, the evidence has demonstrated that it is possible to draw a congressional district map with zero deviation and no precinct split. Plaintiffs' witness, Robert Priest, drew exactly such a map using the same tools as Dr. Memmi. However, unlike Dr. Memmi, Mr. Priest was free to draw the map by manipulating entire precincts from district-to-district in order to achieve absolute population equality. As we have previously pointed out, Dr. Memmi testified that he was more constrained by his superiors. According to that testimony, Dr. Memmi initially formulated three congressional districts of ideal population by manipulating entire precincts. However, at that point, he was instructed to stop using whole precincts and to begin using census blocks to lower the deviation. Because every voting precinct contains several census blocks, manipulation of the census blocks leads almost inextricably to splitting precincts. We also note that none of the congressional districts that have split precincts have an ideal population.

Dr. Memmi was equally restrained in his efforts to bring Act 1 down to a zero deviation. That is, his superiors in the Republican caucus instructed him that he was only to manipulate census blocks and not precincts. This wholesale reliance on the census block method - the lone cause of the precinct splits - is what Defendants now employ to justify the deviations in their map. The logical inconsistency is so deep that it causes us to pause and consider the sincerity of such proffer. If Defendants truly wanted to avoid splitting precincts, they would have done so by enacting a zero deviation map that did not split *any* precincts.

Moreover, it is worth noting that of the maps

presented at trial, Act 1 is that which least comports with the neutral legislative policies that the *Karcher* Court stated would justify a Congressional redistricting plan with some deviations. Act 1 is the plan which contains the least compact districts. (Pls. Ex. 12 at 7.) Act 1 splits the most counties (twenty-five) and municipalities (fifty-nine cities, townships, or boroughs).[5] (*Id.*) With the exception of Act 1's twin, the zero-deviation version, Act 1 even splits the most precincts. (*Id.*) To the extent that Act 1 retains the cores of prior districts, it does so only for districts containing Republican incumbents. (*See id.* at 8.)

However, it is on *Karcher*'s final endorsed neutral criteria - the avoidance of contests between incumbents - that Act 1 fails most miserably. Although Pennsylvania's loss of two congressional seats requires the pairing of only two sets of incumbents in the 2002 elections, Act 1 pits six incumbents against each other: two pairs of Democrats, and one Republican against one Democrat (the latter in a district that heavily favors Republican candidates). At the same time Act 1 pits more incumbents than necessary against one another, it also creates a new district, District 6, in which no incumbent resides. In the face of such evidence, it is clear that *Karcher*'s neutral criteria were not high on the priority list in enacting Act 1.

The dissent suggests that our analysis should pay deference to the policies that Act 1 reflects. However, there is no legal authority to support the corollary assertion that the only relevant zero-deviation maps with no precinct splits are those which comport with the general contours of Act 1.

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[5]In comparison, the now defunct 1992 Plan, which contained twenty-one congressional districts, split only eighteen counties and thirteen municipalities.

In summation, it has been conclusively prove that it is possible to draw a congressional district map with zero population deviation amongst districts without splitting any precincts. Therefore, Defendants cannot rely on a general desire to avoid splitting precincts as a legitimate justification for a map that splits six such precincts. Put another way, if it is possible to achieve a zero deviation map with no precinct splits by manipulating whole precincts, the actions of the Defendants in switching to census block data call into question the legitimacy of their proffered justifications. We find, therefore, that the Defendants have failed to provide any legitimate justification for the population deviations contained in Act 1. As such, we enjoin the implementation of Act 1.

III. Remedy

Having determined that Act 1 is unconstitutional, we now address the question of the appropriate remedy. The Supreme Court has cautioned that "reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." *White v. Weiser*, 412 U.S. 783 (1973). We recognize that the Pennsylvania General Assembly would be unable to enact a new constitutional redistricting plan in time for the 2002 elections. This is not a case where the respective legislative bodies are hopelessly deadlocked and the likelihood is that they will be able to enact a constitutionally sound plan.

Therefore, the Defendants are ordered to submit a constitutionally sound redistricting plan that has been enacted into law by the Commonwealth of Pennsylvania to this court within three weeks of the date of this

opinion.

An appropriate order will follow.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, NORMA JEAN VIETH, and SUSAN FUREY,	:	**Civil No. 1:CV-01-2439**
Plaintiffs	:	**NYGAARD, Circuit Judge**
v.	:	**YOHN, District Judge**
COMMONWEALTH OF PENNSYLVANIA, *et al.*,	:	**RAMBO, District Judge**
Defendants:		

ORDER

In accordance with the preceding opinion, **IT IS HEREBY ORDERED THAT:**

(1) Plaintiffs' request for declaratory judgment is **GRANTED**. Act 1 is hereby declared unconstitutional as a violation of Article I, § of the United States Constitution;

(2) Plaintiffs' request for injunctive relief is **GRANTED IN PART** as follows:

(A) To the extent that Plaintiffs request that the court enjoin Act 1's implementation, Plaintiffs' request is **GRANTED**. Defendants are permanently enjoined from implementing Act 1;

(B) To the extent that Plaintiffs request that the court devise its own redistricting plan for use in the 2002 congressional elections,

Plaintiffs' request is **deferred pending compliance by the Pennsylvania General Assembly with this order**; and instead,

(3) The Pennsylvania General Assembly shall, within three weeks of the date of this order, prepare, enact and submit for review and final approval by this Court, a congressional redistricting plan in conformity with this opinion.

This Court shall retain jurisdiction pending issuance of a final order in this matter.

IT IS SO ORDERED.

/s/ Richard L. Nygaard
RICHARD L. NYGAARD
United States Circuit Judge

/s/ Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: April 8, 2002.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, NORMA JEAN VIETH, and SUSAN FUREY,	**: Civil No. 1:CV-01-2439**
Plaintiffs	**: NYGAARD, Circuit Judge**
v.	**: YOHN, District Judge**
COMMONWEALTH OF PENNSYLVANIA, *et al.*,	**: RAMBO, District Judge**
Defendants:	

YOHN, DISTRICT JUDGE, DISSENTING:

I agree with majority that the plaintiffs have met the first prong of the *Karcher* test and that the appropriate remedy, if Act 1 is unconstitutional, is to give the Commonwealth of Pennsylvania a reasonable period of time to enact a constitutionally sound redistricting plan.

I respectfully dissent, however, from Section II.B. of the majority opinion and conclude that defendants have met their burden, although just barely, to establish a justification for the nineteen person maximum deviation, and that Act 1 therefore passes constitutional muster.

In *Karcher v. Daggett*, 462 U.S. 725 (1983), the Court stated that the plaintiffs' "success in proving that the Feldman Plan was not the product of a good faith effort to achieve population equality means only that the burden shifted to the state to prove that the population

deviations in its plan were necessary to achieve some legitimate state objective." (emphasis added). 462 U.S. at 740. Thus, the focus of the second prong of the *Karcher* test is the state's justification for the population deviations in Act 1.[6]

The defendants have pointed to a litany of state interests behind Act 1; however, since the focus of our inquiry in the justification phase of the *Karcher* analysis is the population deviation, the only justification submitted which deals with that issue is the policy objective of limiting voter precinct splits. Defendants contend that Act 1 could be "zeroed-out" by using Modification One but that this would entail splitting twenty-six voting precincts rather than the split of six voting precincts in Act 1.

Both parties agree that splitting precincts creates additional costs and work for county election officials in acquiring voting machines, in customizing ballots, in training precinct officials, in registering voters and in counting ballots. In addition, it increases the potential for voter confusion and candidate confusion. Thus, the desire to minimize the splitting of voting precincts is a legitimate justification, particularly when the overall population deviation is only nineteen.

The evidence with reference to this justification is, however, minimal. Dr. John Memmi testified that he was

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[6]The majority correctly points out that the Court has "made clear that the burden borne by the state varies inversely with the magnitude of the population deviation . . . . That is, the greater the deviation, the more compelling the government's justification must be." It would seem therefore that a nineteen person deviation in a congressional district of 646,371 or 646,372 would require a justification of the lowest end of the "justification" scale.

the cartographer who worked on the final draft of what became Act 1. When he reached the population deviation of nineteen he was told by his superiors that he could stop work. Inexplicably, neither party asked Dr. Memmi who told him this or called as a witness the person who told him to stop work in order to explore the basis for the decision. As a result, we are left to draw inferences from the evidence presented.

Defendants ask us to draw the inference that the effort to equalize population was halted because of a desire not to split any more voting precincts. There are 9,427 voting precincts in Pennsylvania but there are 322,424 census blocks. Act 1 as enacted contained six voting precinct splits. (Defendants' exhibit 92). Subsequent to the enactment of Act 1 Dr. Memmi made further adjustments of census blocks in order to produce a plan with a zero population deviation. Using census blocks inevitably leads to more voter precinct splits and the resulting plan, designated as Modification One contains twenty-six voting precinct splits. (Defendants' exhibit 90).

This inference is also supported by the testimony of Dr. Memmi concerning the conversation when he was working on the last draft of what became Act 1 and told that he could stop work.

Q Did they tell you why they thought that was sufficient?

A The did not specifically say John, Bill, these are the reasons why we are stopping at 19. I don't mean to be curt.

One of the prevailing themes throughout the exercise was to minimize the number of precinct incursions. We were at six. I worked with

> individuals who understand the election process. They understand the administration at the county level.
>
> I do not profess to have any more than at best a superficial understanding of that. But the concern was to minimize the number of precinct incursions so that election administration would be as smooth as it could be.

R. at 320-21.

Finally, I note that neither party has, even with the benefit of hindsight, submitted a plan following the general contours of Act 1 which does not involve the splitting of more than six voting precincts. Thus, I fund that the inference defendants suggest, that the justification for Act 1 is the reduced number of voting precinct splits, is reasonable.

Plaintiffs, on the other hand, ask us to infer that the Act 1 plan was not "zeroed out" because of partisan considerations. Plaintiffs produced a map that was "zeroed out" without splitting any voting precincts, Alternative Four. However, this plan does not follow the general contours of Act 1. The Court has oftentimes reminded us of the necessity not to override state goals, policies and preferences any more than is necessary. *See Abrams v. Johnson*, 521 U.S. 74, 101 (1997); *Upham v. Seaman*, 456 U.S. 37, 41-42 (1982); *White v. Weiser*, 412 U.S. 783, 795 (1973). There is no evidence to support a conclusion that Alternative Four encompasses the many other state goals, policies and preferences inherent in Act 1 which resulted in its enactment. In addition, plaintiffs have suggested no connection between the nineteen person deviation in Act 1 and the alleged partisanship of the plan. Indeed, any such suggestion is contradicted by Dr. Memmi's specific testimony that when he was trying

to reduce the plan to the minimal population deviation possible on December 31, 2001, nobody expressed any concern that continuing to trade whole precincts might change the political characteristics of some of the districts and that during the entire procedure there was no commentary of a political nature. R. at 322. Moreover, to the extent that the plaintiffs are arguing partisan gerrymandering, the *Karcher* Court noted that "beyond requiring states to justify population deviations with explicit, precise reasons, which might be expected to have some inhibitory effect, *Kirkpatrick* does little to prevent what is known as gerrymandering. . . . *Kirkpatrick's* object, achieving population equality, is far less ambitious than what would be required to address gerrymandering on a constitutional level." *Karcher*, 462 U.S. at 734 n. 6. Thus, the inference which the plaintiffs ask us to draw is not supported by the evidence, by reason, or by law.

I conclude, therefore, that the nineteen person deviation was justified by the "legitimate state objective" of avoiding further splitting of voter precincts and that there has been no proof that the population deviation of nineteen persons bore any relationship to the alleged partisanship of Act 1. Thus, Act 1 is not unconstitutional.

/s/ William H. Yohn, Jr.
William H. Yohn, Jr., Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
PENNSYLVANIA

RICHARD VIETH,	**: CIVIL NO. 1:CV-01-2439**
NORMA JEAN VIETH	**:**
and SUSAN FUREY,	**:**
	:
Plaintiffs	**:**
	:
v.	**:**
	:
COMMONWEALTH OF	**:**
PENNSYLVANIA, *et al.*,	**:**
	:
Defendants	**:**

OPINION OF THE COURT[1]

Before the court are: (1) a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) filed by Defendants Commonwealth of Pennsylvania, Pennsylvania Governor Mark Schweiker, Secretary of State Kim Pizzingrilli, and Commissioner of the Bureau of Commissions, Elections, and Legislation Richard Filling ("Executive Officers"); (2) Defendant Executive Officers' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6); (3) a Rule 12(b)(1) motion to dismiss filed by Defendants Matthew Ryan and Robert Jubelirer ("Presiding Officers")[2]; and (4) Defendant Presiding

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[1]RAMBO, SENIOR DISTRICT JUDGE authored the Opinion of the Court in which NYGAARD, CIRCUIT JUDGE and YOHN, DISTRICT JUDGE join.

[2]Defendant Ryan is the Speaker of the Pennsylvania House of Representatives, and Defendant Jubelirer is the Lieutenant Governor of the Commonwealth of Pennsylvania.

Officers' motion to dismiss pursuant to Rule 12(b)(6). The parties have briefed the issues, and the matter is ripe for disposition.

I. Background

A. Factual Allegations

Plaintiffs Richard Vieth, Norma Jean Vieth, and Susan Furey brought this action, pursuant to 42 U.S.C. § 1983, against Defendant Commonwealth of Pennsylvania, Defendant Executive Officers, and Defendant Presiding Officers. Plaintiffs' claims arise out of the enactment of Pennsylvania Senate Bill 1200 ("Act 1"), Pennsylvania's Congressional redistricting plan, which Governor Schweiker signed into law on January 7, 2002.

Plaintiffs allege the following facts in their complaint: On December 28, 2000, the United States Secretary of Commerce reported the results of the year 2000 decennial national census to then President William J. Clinton. The tabulation indicated that as of April 1, 2000 Pennsylvania had a resident population of 12,281,054 persons. Accordingly, the Secretary of Commerce's report allotted Pennsylvania only nineteen Congressional representatives resulting in a decrease of two representatives from the results of the 1990 census.

Thus, the responsibility for adopting a Congressional redistricting plan fell to Pennsylvania's General Assembly, which failed to reach a compromise during the regular 2001 legislative session. The State House of Representatives passed one version, and the

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Thus, Speaker Ryan presides over the Pennsylvania House of Representatives, and Lieutenant Governor Jubelirer presides over the Pennsylvania State Senate.

State Senate passed a different plan. The General Assembly, however, adjourned at an impasse on December 13, 2001.[3]

In the meantime, prominent national figures in the Republican party — such as congressional Speaker of the House Dennis Hastert, Congressman Thomas M. Davis III, United States Senator Rick Santorum, and Karl Rove, political consultant to current President George W. Bush — began pressuring Governor Schweiker, a Republican, and the Republican members of the General Assembly to adopt the Senate redistricting plan as a punitive measure against Democrats for having enacted apparently pro-Democrat redistricting plans in other states. In response, Republican members of the state House and Senate began working together to reach an agreement. In the process, they effectively ignored all Democratic members of the General Assembly, including members of the Conference Committee appointed to resolve the impasse between the copmeting plans.

At the Conference Committee meeting on January 2, 2002, the Republicans presented the final version ("Senate Bill 1200") of the new redistricting plan. The Democratic members of the Conference Committee had no input on this version. Although the bill passed the Conference Committee, thus sending it for a vote before both houses, all Democratic members of the Conference Committee voted against the version, and all Republicans voted in favor. On January 3, 2002, the General Assembly passed Senate Bill 1200. On January 7, 2002, Governor Schweiker signed the bill into law as Act 1.

Plaintiffs, registered Democrats and Pennsylvania citizens, subsequently filed this suit to enjoin Act 1's

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[3]Plaintiffs also allege that the Republican party enjoys majorities in both state houses and holds the Governor's office.

implementation. Plaintiffs Richard and Norma Jean Vieth both reside in Lebanon County, Pennsylvania, in a portion of the county that will fall in District 16 under Act 1. Plaintiff Susan Furey resides in Montgomery County, Pennsylvania. Under Act 1's precursor, Plaintiff Furey's residence fell in District 13. However, under Act 1, Plaintiff Furey now resides in District 6. Defendants are the Commonwealth of Pennsylvania and various executive and legislative officers who were either responsible for enacting Act 1 or will be responsible for implementing it during the next Congressional election.

According to the results of the 2000 census, Pennsylvania has a population of 12,281,054. When divided equally among the nineteen Congressional districts, this results in a population of 646,371 or 646,372 people per district.[4] However, under Act 1, District 7 would have a population of 646,380. On the other hand, Districts 1, 2, and 17 would each have a population of 646,361. Thus, under Act 1 there is a nineteen-person deviation between the least populated and most populated districts. While this is less than the deviation under the 1992 plan, unlike that plan, Act 1 splits eighty-four local governments (including twenty-five counties and fifty-nine cities, boroughs or townships) among different congressional districts. Montgomery County, where Plaintiff Furey resides, is divided up among six different congressional districts. Montgomery County, where Plaintiff Furey resides, is divided up among six different congressional districts. Under the 1992 plan, only twenty-seven local governments (nineteen counties and eight cities, townships or boroughs) were split between different districts. Additionally, Districts 4, 6, 9, 10, 11, 13, 14, 15, and 19 have populations of over 646,372 without any legitimate justification.

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[4]The actual result is 646,371.263157.

Currently, the two major parties hold nearly equal support in the Commonwealth. Of voters registered with one of the two major parties, 53.6% are registered Democrats and 46.4% are registered Republicans. In November 2000, during the last election held under the 1992 plan, voters in Pennsylvania elected eleven Republican congressman and ten Democratic congressman to serve in Washington. In those twenty-one congressional races, Democrats garnered 50.6% of the aggregate vote, with Republicans receiving 49.4%. Democrats also received more total votes than Republicans, by a margin of 50.1% to 49.9%, in the five statewide races in 2000.[5] Yet despite this nearly equal split, Democrats will likely win only six of Pennsylvania's nineteen congressional seats. Thus, Act 1 is "designed to ensure that Republicans would win at least 13 of the 19 congressional seats." (Amd. Compl. at ¶32.) "It cements Republican power and effectively reduces Democrats to being a small minority of the Commonwealth's congressional delegation for the coming election and likely the coming decade." (*Id.* at ¶ 33.)

As a direct result, Act 1 "dramatically affects the Democratic Party's prospects for success in congressional elections in Pennsylvania . . . and will reduce the choices that voters . . . will have in Pennsylvania elections." (*Id.* at ¶ 35.) "Because of the bias . . . the Democratic Party will have greater difficulty in fielding competitive candidates." (*Id.*) Thus, Act 1 operates "to essentially shut Democrats and Democratic voters out of the political process." (*Id.* at

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[5]In 2000, Pennsylvania held statewide elections for President, one United States Senate position, State Attorney General, State Auditor General, and State Treasurer. Democratic candidates won the elections for President and Auditor General, and Republican candidates won the elections for Attorney General, State Treasurer and United States Senator.

¶ 36.) Plaintiffs, in particular, "will suffer harm . . . [because they] will now be increasingly represented by members of Congress who do not represent their views." (*Id.* at 36.)

B. Procedural History

On December 21, 2001, Plaintiffs filed the original complaint in this matter. Subsequently, Plaintiffs filed a motion to convene a three-judge panel pursuant to 28 U.S.C. § 2284(b)(1). By an order dated January 23, 2002, the court granted Plaintiffs' motion and requested that Chief Judge Edward Becker of the Third Circuit Court of Appeals appoint the members of the panel. Chief Judge Becker appointed the current panel: The Honorable Richard Nygaard, United States Circuit Judge for the Third Circuit of Appeals; The Honorable William H. Yohn, Jr., United States District Judge for the Eastern District of Pennsylvania; and The Honorable Sylvia Rambo, Senior United States District Court Judge for the Middle District of Pennsylvania.

On January 11, 2002, Plaintiffs filed an amended copmlaint alleging violations of 42 U.S.C. § 1983.[6] In that document, Plaintiffs allege that Act 1 violates: (1) Article I, § 2 of the United States Constitution; (2) the Equal Protection Clause of the Fourteenth Amendment; (3) the Privileges and Immunities Clause of the Fourteenth

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[6]Plaintiffs include the violation of § 1983 under a separate count. However, "§ 1983 does not create substantive rights but 'merely redresses the deprivation of . . . rights . . . created by the Constitution or federal statute.'" *Ridgewood Bd. of Educ. v. N.E. for M.E.*, 178 F.3d 238, 251-52 (3d. Cir. 1999) (quoting *W.B. v. Matula*, 67 F.3d 484, 493 (3d Cir. 1995)). Therefore, the court will construe Plaintiffs' amended complaint as an action brought pursuant to § 1983 to vindicate their rights under the Constitution.

Amendment; and (4) Plaintiffs' right to free association guaranteed by the First Amendment. Accordingly, Plaintiffs seek the following declaratory and injunctive relief: (1) a declaratory judgment that Act 1 violates Plaintiffs' constitutional rights; (2) a permanent injunction preventing Defendants from implementing Act 1; (3) a court order establishing a new congressional redistricting plan and enjoining Defendants from enacting or implementing a new plan until the 2004 elections; and (4) attorney's fees and court costs.

On January 22, 2002, Plaintiffs filed a motion requesting that the court set a deadline of February 18, 2002 for the state courts to conclude all litigation pertaining to Act 1.[7] Additionally, Plaintiffs filed an expedited motion for appointment of the three-judge panel. By an order dated January 24, 2002, the court denied Plaintiffs' motion to set a deadline and denied, as moot, Plaintiffs' expedited motion to convene a three-judge panel. By a separate order issued on January 24, 2002, the court set the case for an evidentiary hearing to be conducted on February 11 and February 12, 2002.

Also on January 24, 2002, both Defendant Presiding Officers and Executive Officers filed the separate motions to dismiss which are currently before the court. Defendant Presiding Officers followed this with a motion to abstain, filed on January 24, 2002. By separate orders, the court established an expedited briefing schedule for both the motions to dismiss and the motion for abstention.

Defendant Presiding Officers filed a motion for

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[7]Currently, there is a state court action pending which attacks Act 1 on the basis that it violates the Pennsylvania Constitution. *See Erfer v. Commonwealth of Pennsylvania*, 10 M.D. 2002 (Pa. Commw. Ct.).

reconsideration and *vacatur* of the court's January 24, 2002 order that set the captioned matter for an evidentiary hearing starting February 11, 2002. The court held a telephone conference on January 29, 2002, which all parties attended, in order to discuss the reconsideration motion. During the conference call, counsel informed the court that the Supreme Court of Pennsylvania issued an order that afternoon requiring the Commonwealth Court to hold a hearing on Act 1 by February 1, 2002. Additionally, the Supreme Court of Pennsylvania ordered the Commonwealth Court to issue findings of fact and conclusions of law by February 8, 2002 addressing the validity of Act 1 under the Pennsylvania Constitution. In light of these circumstances, by an order dated January 30, 2002, the court delayed the evidentiary hearing until March 11, 2002 and set an expedited discovery schedule.

II. Discussion

A. Motion to Dismiss pursuant to Rule 12(b)(1)

1. Legal Standard

"A motion to dismiss under Rule 12(b)(1) challenges the jurisdiction of the court to address the merits of the plaintiff's complaint." *Ballenger v. Applied Digital Solutions, Inc.*, 2002 U.S. Dist. LEXIS 1518 at *8 (D. Del. January 31, 2002). The motion should be granted where the asserted claim is "insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy." *Coxson v. Commonwealth of Pennsylvania*, 935 F.Supp. 624, 626 (W.D.Pa. 1996) (citing *Growth Horizons v. Delaware County*, 983 F.2d 1277, 1280-81 (3d Cir. 1993)). Additionally, a motion to dismiss under Rule 12(b)(1) may present either a facial or factual challenge to

subject matter jurisdiction. *See Mortensen v. First Federal Savings and Loan*, 549 F.2d 884, 891 (3d Cir. 1977).

This case presents a facial challenge because Defendants do not dispute, at this juncture, the existence of the jurisdictional facts alleged in the complaint. *See* 2 James Wm. Moore *et al.*, Moore's Federal Practice ¶ 12.30[4] (3d ed. 1999) (explaining the difference between a facial and factual challenge to subject matter jurisdiction pursuant to Rule 12(b)(1)). Therefore, the court must accept the facts alleged in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. *Zinerman v. Burch*, 494 U.S. 113, 118 (1990); *Markowitz v. Northeast Land Co.*, 906 F.2d 100, 103 (3d Cir. 1990).

2. Partisan Gerrymandering Claim

In their motions to dismiss, Defendants contend that claims of partisan gerrymandering are non-justiciable. Thus, according to Defendants, the court lacks subject matter jurisdiction to hear such claims. However, Defendants also acknowledge that in *Davis v. Bandemer*, 478 U.S. 109 (1986), the Supreme Court held that such claims are justiciable as equal protection violations. Instead of arguing for dismissal, Defendants wish to have their objections to this holding noted on the record in case they seek to raise the issue at a later time. Accordingly, the court notes the objection.

3. Eleventh Amendment Immunity

Defendant Commonwealth of Pennsylvania seeks dismissal of the claims against it arguing that it is immune from suit in federal court based on Eleventh Amendment sovereign immunity. At a minimum, the Eleventh Amendment stands for two propositions: "first, that each State is a sovereign entity in our federal system;

and second, that it is inherent in the nature of sovereignty not to be amendable to the suit of an individual without its consent." *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54 (1996)(internal quotations omitted). Thus, the Eleventh Amendment "prohibits federal courts from entertaining suits by private parties against States and their agencies." *Alabama v. Pugh*, 438 U.S. 781, 791 (1978). This bar applies regardless of whether the plaintiff seeks monetary damages or injunctive relief against a State. *Seminole Tribe*, 517 U.S. at 58 (citing *Cory v. White*, 457 U.S. 85, 90 (1982) ("It would be a novel proposition indeed that the Eleventh Amendment does not bar a suit to enjoin the State itself simply because no money judgment is sought.")

Under certain circumstances, the Eleventh Amendment does not bar federal courts from entertaining suits against States. First, suit is permitted where the State has waived its immunity. *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241 (1985). Second, sovereign immunity does not apply if Congress validly abrogates it through its enforcement powers pursuant to the Fourteenth Amendment. *Seminole Tribe*, 517 U.S. at 57-73. Third, Eleventh Amendment immunity is inapplicable where the plaintiff sues State officials in their official capacity seeking only prospective relief. *Ex Parte Young*, 209 U.S. 123 (1908).

In this case, Plaintiffs have brought suit against the Commonwealth thereby implicating its sovereign immunity. Plaintiffs do not contend that the Commonwealth has waived its immunity, nor could they. Pennsylvania has clearly reserved its power to invoke sovereign immunity. 42 Pa. Cons. Stats. Ann. §8521(b)(2001). Likewise, Plaintiffs could not contend that by enacting §1983, Congress validly abrogated Pennsylvania's sovereign immunity. *See Quern v. Jordan*, 440 U.S. 332, 345 (1978) ("[Section] 1983 does not

explicitly and by clear language indicate on its face an intent to sweep away the immunity of the States; nor does it have a history which focuses directly on the question of state liability and which shows that Congress considered and firmly decided to abrogate the Eleventh Amendment immunity of the States."). *Ex Parte Young* is not implicated here. The Commonwealth is the only defendant to raise sovereign immunity as a defense.

Because the Eleventh Amendment bars suit against the Commonwealth of Pennsylvania under the circumstances present in this case, the court will dismiss the action against the Commonwealth for lack of subject matter jurisdiction.

4. Standing

The constitutional minimum of standing contains three elements:

> First, the plaintiff must have suffered an "injury in fact" - an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural, or hypothetical. Second, there must be a casual connection between the injury and the conduct complained of. . .Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (citations omitted). The party who seeks the exercise of jurisdictions bears the burden of alleging facts that "he is a proper party to invoke judicial resolution of the dispute." *Warth v. Seldin*, 422 U.S. 490, 518 (1975); *see also McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936).

a. Partisan Gerrymandering

Defendants contend that Count II of Plaintiffs' amended complaint, alleging that Act 1 constitutes permissible partisan gerrymandering in violation of the Equal Protection Clause, must be dismissed because Plaintiffs lack standing. The crux of Defendants' argument is that Plaintiffs do not have standing to challenge Act 1 as a whole.[8]

Defendants would have the court apply the standing requirement for racial gerrymandering cases to those involving only partisan gerrymandering. In the context of racial gerrymandering, in order to have standing a plaintiff must allege that he resides in a district that has been impermissibly gerrymandered on the basis of race. *United States v. Hays*, 515 U.S. 737, 743-44 (1995). Racial gerrymandering is prohibited because, where a district is created solely to serve the perceived common interests of one racial group, it is reasonable to presume that elected officials in such districts will ignore the plights of non-members of the dominant racial group. This stems from the corollary that racial classifications are disfavored in general because they threaten to stigmatize individuals according to their race and incite racial hostility. *Id.* at 744 (citing *Shaw v. Reno*, 509 U.S. 630, 648 (1993)). Therefore, only where a person resides in a district created to cater to one race over another can he allege to have suffered the particularized harm necessary to justify standing. "On the

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[8]Defendants also argue that Plaintiffs have failed to establish standing because Plaintiffs "allege only group harm (i.e., to Democrat voters & the Democrat Party), not harm to their individual interests." (Def. Press. Offs. Br. in Sup. Mot. to Dis. at 6.) However, Defendants overlook the fact that Plaintiffs allege harm to them as individual members of the Democratic party.

other hand, where a plaintiff does not live in such a district, he . . . does not suffer those special harms, and any inference that the plaintiff has personally been subject to a racial classification would not be justified absent evidence tending to support that inference." *Id.* at 745.

The reasoning underlying claims based on racial gerrymandering, however, is quite distinct from the type of injury that partisan gerrymandering inflicts. The very nature of a claim of partisan gerrymandering contemplates a harm which extends beyond that inflicted upon a particular voter. Rather, such a claim envisions harm to a particular class of voters that results in impermissibly denying them participation in the political process. The Supreme Court recognized this principal in *Davis v. Bandemer*, the first case holding that partisan gerrymandering may be actionable as a violation of equal protection. In that decision, the Court stated: "Although the statewide discrimination here was allegedly accomplished through the manipulation of individual district lines, the focus of the equal protection inquiry is necessarily somewhat different from that involved in the review of individual districts." 478 U.S. at 127.[9]

In equal protection claims based on partisan gerrymandering, the allegation is that an identifiable political group has had its political voice silenced through the drawing of elective district lines. Although this involves, to a certain extent, manipulation of individual district lines, the injury is done to the entire identifiable

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[9]Moreover, we note that to the extent that an individual plaintiff is required to live in an allegedly gerrymandered district, Plaintiffs have met that requirement. Plaintiff Furey lives in District 6. (Amd. Compl. at ¶4.) Plaintiffs allege that District 6 is one of the gerrymandered districts. (Amd. Compl. at §22.)

political group. The constitutional injury lies not inequality among various individual districts, but rather in the configuration of the districts as a whole when they serve to disadvantage a certain class of voters. Therefore, unlike a claim for race-based gerrymandering, a plaintiff in a partisan gerrymandering claim need not allege that he lives a particular district that has been gerrymandered on the basis of political affiliation.

Additionally, we do not agree with Defendants that adopting such a standing rule would endow nationwide standing upon all individual members of the major political parties. In the context of partisan gerrymandering, to satisfy the particularized harm requirement, a plaintiff must allege that he or she is a member of a politically salient class whose geographical distribution is sufficiently ascertainable that it could have been taken into account when drawing district boundaries. In this case, Plaintiffs allege that they are citizens of Pennsylvania and members of the Democratic party. Additionally, they allege that Defendants have utilized the congressional redistricting process to vanquish Plaintiffs' political voice in Congress. These allegations, together, are sufficient to satisfy the particularized injury requirement for standing.

Remaining Claims

As to the remaining claims, Defendants intimate that Plaintiffs do not have standing because the injury that they allege is "speculative and generalized," (Def. Exec. Offs. Br. in Sup. Mot. to Dis. at 7,) and is "a purely hypothetical harm, tied to the allegation of partisan gerrymandering." (Def. Pres. Offs. Br. in Sup. Mot to Dis. at 7.) We disagree.

Defendants are correct that Plaintiffs do not allege that they have suffered an injury in fact as of this

moment. However, Act 1 has yet to be implemented. Plaintiffs have clearly alleged that if Act 1 is allowed to be implemented it will cause a very real harm. Principally, Plaintiffs claim that their vote has been diluted in violation of the one person-one vote requirement of Article I. That harm is completely distinct from the harm that would be inflicted as a result of partisan gerrymandering. Act 1 has been enacted and, as of now, is scheduled to be used as the congressional district plan in the 2002 elections. If Act 1 is - as Plaintiffs have alleged - unconstitutional, then Plaintiffs have alleged a harm that is "actual and imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560. Therefore, the court has no problem concluding that Plaintiffs have alleged an injury in fact.[10] Likewise, Plaintiffs have sufficiently pleaded a causal connection between Defendants' conduct and the injury. Finally, as will be discussed below, *see infra* at Part II.B.7, the court has he remedial powers to redress the injuries that Plaintiffs have alleged. In short, the court finds that the allegations of Counts I, III, and IV of Plaintiffs' amended complaint satisfy the constitutional minimum of standing.

B. Motion to Dismiss pursuant to Rule 12(b)(6)

1. Legal Standard

In deciding a motion to dismiss pursuant to Federal Rule 12(b)(6), the court is required to accept as true all of the factual allegations in the complain and all

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[10]As to the one person-one vote claim, the court notes that no Plaintiff resides in an underpopulated district. Additionally, Plaintiffs have alleged that there are districts that are under populated. Therefore, according to Plaintiffs' allegations, they have suffered an injury in fact due to vote dilution.

reasonable inferences that can be drawn from the face of the complaint. *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996). "The complaint will be deemed to have alleged sufficient facts if it adequately put[s] the defendant[s] on notice of the essential elements of the plaintiff's cause of action." *Id.* The court will not dismiss a complaint for failure to state a claim "unless it appears beyond a doubt that the plaintiff[s] can prove no set of facts in support of [their] claim that would entitle [them] to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

"In determining whether a claim should be dismissed under [Federal] Rule 12(b)(6), a court looks only to the facts alleged in the complaint and its attachments without reference to other parts of the record." *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994). However, the court may consider "undisputedly authentic document[s] that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the [attached] document[s]." *Pension Ben. Guar. Corp. v. White Consol. Ind*, 998 F.2d 1192, 1196 (3d Cir. 1993).

Article I (One person-One vote)

In Count I of their amended complaint, Plaintiffs allege that Act 1 violates Article I, §2 of the United States Constitution[11] by diluting the vote of persons living in over-populated congressional districts. Defendant contend that this claim must be dismissed because Plaintiffs have failed to allege that: (1) a plan with smaller population deviations than Act 1 could have been

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[11]In relevant part, Article I, §2 states: "[Congressional] Representatives. . .shall be apportioned among the several States which may be included within this Union, according their respective Numbers. . . .

enacted; or (2) that the deviations in Act 1 were unavoidable.

Article I, §2, requires that members of Congress are chosen with equal representation for equal numbers of people. *Wesbury v. Sanders*, 376 U.S. 1, 7-8 (1963). This Constitutional mandate, commonly referred to as the one person-one vote principle, requires "that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." *Id.* As the Supreme Court has explained:

> [T]he "nearly as practicable" standard requires that the State make a good-faith effort to achieve precise mathematical equality. . . .Unless population variances among congressional districts are shown to have resulted, despite such effort, the State must justify each variance, *no matter how small*. . . .[Article I, §1, therefore] permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown."

Kirkpatrick v. Preisler, 394 U.S. 526, 530-31 (1969) (emphasis added).

Thus, in a challenge to a congressional redistricting plan, the plaintiff bears the initial burden of proving that the differences in district-to-district population could have been reduced or eliminated by "a good-faith effort to draw districts of equal population." *Karcher v. Daggett*, 462 U.S. 725, 730 (1983). If the plaintiffs can demonstrate that the differences in population were not the result of a good-faith effort to achieve equality in population between the various districts, then the State must prove that some legitimate

reasons justifies the variances. *Id.* at 731.

Defendants argue that this claim should be dismissed because Plaintiffs have not offered a plan with smaller deviations, and Plaintiffs have not demonstrated that the deviations in Act 1 were unavoidable. According to Defendants, although there are variations in Act 1, they equal 0.00%. Therefore, "[a]s a matter of law, the district populations are equal and there is no significant variance between districts to be explained." (Def. Pres. Offs. Br. in Sup. Mot. to Dis. at 8.) However, the Supreme Court has squarely rejected any *de minimis* exception to the requirement of absolute equality in population between districts. *Karcher*, 462 U.S. at 734 ("[T]here are no *de minimis* variations, which could practically be avoided, but which nonetheless meet the standard of Art. I, §2 without justification.") "Article I, §2, . . .permits only the limited population variations which are unavoidable despite a good faith effort to achieve absolute equality, or for which justification is shown." *Id.* at 730. Contrary, to Defendants' contention, the only variations which are per se excusable are those which are unavoidable. For example, Pennsylvania's population of 12,281,054 does not divide equally between its allotted nineteen districts. Therefore, if all of the districts under Act 1 had populations of 646, 371 or 646,372, then the court could conclude that the differences in population were unavoidable and would not have to examine whether Act 1 was enacted in good faith.

However, according to Plaintiffs' allegations, this is simply not the case. District 7, the most populated district, has a population of 646, 380, and Districts 1, 2, and 17, the least populated districts, have populations of 646, 361; a maximum difference in population of nineteen. These variances, therefore, are not per se unavoidable. *See e.g. Anne Arundel County Republican Cent. Comm. V. State Admin. Bd. Of Election Laws*, 781 F.

Supp. 394, 395-96 (D. Md. 1991)(holding that a maximum deviation of ten between the most populated and the least populated districts does not satisfy *Karcher's* requirement of absolute equality). Plaintiffs also allege that Act 1's variances are not the result of a good-faith effort to achieve population parity, but rather are part of a Republican plan to eliminate Democratic representatives from Congress. Additionally, Plaintiffs make several factual allegations that, if proven, would tend to undermine any justification Defendants might proffer in support of Act 1's population variances.

Defendants cite *Karcher* for the proposition that Plaintiffs must allege that a plan with smaller deviations was possible. The court finds that argument unpersuasive. In *Karcher*, the plaintiffs provided the court with an alternative plan as evidence that the challenged plan was not the result of a good-faith effort to achieve district population parity. 462 U.S. at 397. That case, however, had proceeded beyond the Rule 12(b)(6) stage. While Plaintiffs may have to provide such a plan in order to satisfy their ultimate burden of persuasion in this case, there is nothing in the *Karcher* decision indicating that such a plan must be alleged in the complaint. Plaintiffs, therefore, have pleaded a prima facie violation of the one person-one vote command of Article I, §2. Accordingly, the court will deny Defendants' motion to dismiss Count I of Plaintiffs' amended complaint.

2. Equal Protection (Partisan Gerrymandering)

In *Davis v. Bandemer*, the Supreme Court first recognized that claims for violation of equal protection based on partisan gerrymandering present justiciable issues. 478 U.S. at 123-26. Although that holding commanded a majority, only a plurality of the court endorsed the standards setting out what constitutes such

a violation. Where a fragmented Court decides a case and no single rationale earns the endorsement of five Justices, "the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." *Gregg v. Georgia*, 428 U.S. 153, 169 n. 15(1976). Therefore, we may correctly view the plurality's analysis in *Bandemer* as constituting the governing standards to be applied in this case. *Accord Pope v. Blue*, 809 F. Supp. 392, 395 (W.D.N.C. 1992); *Republican Party v. Wilder*, 774 F.Supp. 400, 403-04 (W.D. Va. 1991); *Badham v. Fong Eu*, 694 F. Supp. 664, 668 (N.D. Cal. 1988).

In *Bandemer*, a plurality of the Court held that a plaintiff, in order to succeed on an equal protection claim of partisan gerrymandering, must "prove both intentional discrimination against an identifiable political group and an actual discriminatory effect on that group." 478 U.S. at 127. With this standard in mind, we now examine Plaintiffs' amended complaint in order to determine whether they have alleged facts that, if proven, would constitute an equal protection violation.

a. Identifiable Political Group

Defendants initially argue that Plaintiffs have failed to allege facts that could establish that they are members of an identifiable political group. Specifically, Defendants contend that Plaintiffs have failed to allege facts demonstrating that Democrats in Pennsylvania vote as a block. However, Defendants do not point to any authority which would require such an allegation. The court has scoured the *Bandemer* decision and has found no such requirement. Instead, the court finds that *Bendemer* indicates that Plaintiffs must allege only that they are members of an identifiable political group whose geographical distribution is sufficiently ascertainable that it could have been used in drawing electoral district lines.

Clearly, by alleging that they are Pennsylvanian citizens who vote for Democrats, Plaintiffs have satisfied this requirement.

b. Discriminatory Intent

Both parties appear to recognize that the intent requirement in this case has been met. As the *Bandemer* plurality pointed out, "[a]s long as redistricting is done by a legislature, it should not be very difficult to prove that they likely political consequences of the reapportionment were intended." *Id.* at 128. In this case, Plaintiffs allegations - that the Republican majority in the Pennsylvania General Assembly prevented all Democratic input on Act 1 in order to establish a Republican super-majority in Pennsylvania's congressional caucus - are sufficient to satisfy their pleading requirement.

Actual Discriminatory Effects

The analysis as to the actual discriminatory effect is not nearly as simple. It appears that the effects analysis itself involves another two-pronged determination. First, Plaintiffs must prove an actual or projected history of disproportionate election results. Second, Plaintiffs must prove that "the electoral system is arranged in a manner that will consistently degrade a voter's, or group of voters', influence on the political process as a whole." *Id.* at 105. While Plaintiffs' allegations may be sufficient to satisfy the first requirement as a projection of disproportionate election results, they do not indicate that Plaintiffs have been, or will be, prevented from participating in the political process. Even assuming *arguendo* that Plaintiffs' allegations are true, the court will dismiss Plaintiffs' equal protection claim because Plaintiffs have not alleged facts indicating that as a result of Act 1 Plaintiffs will be

completely shut out of the political process.

We begin our analysis by stating that the recondite standard enunciated in *Bandemer* offers little concrete guidance. However, the result may assist us. In that case, Republicans enjoyed majorities in both houses of the state legislature, and the Governor was a Republican. Exploiting these majorities, the Republicans adopted a state legislature redistricting plan that heavily favored Republicans. The plaintiffs in *Bandemer* filed suit challenging the plan as a violation of equal protection. At trial before a three-judge panel, the plaintiffs presented the following evidence: (1) of the statewide votes cast in the elections for the State House of Representatives, Democratic candidates received 51.9% of the vote, but won only forty-three of the 100 seats available; (2) of the statewide votes cast in the elections for the State Senate, Democratic candidates received 53.1% of the vote, but won only thirteen of the twenty-five seats available; (3) in two counties where 46.6% of the voting population tended to vote Democrat on a regular basis, Republicans won 85% of the seats available - eighteen out of twenty-one; (4) the plan disregarded political subdivision boundaries defining communities of interest; and (5) the plan disregarded the one person-one vote imperative and the Voting Rights Act's no retrogression requirement. 478 U.S. at 116, 134. On this evidence, the panel held that the plan violated equal protection as a partisan gerrymandering.

A plurality of the Supreme Court, however, overturned that result. In doing so, the Court held that the evidence failed to establish that the redistricting plan had a sufficiently adverse impact on the Indiana Democrats to constitute a violation of the Equal Protection Clause. *Id.* at 129. Specifically, the Court stated that "the mere lack of proportional representation will not be sufficient to prove unconstitutional

discrimination. Again, without specific supporting evidence, a court cannot presume in such a case that those who are elected will disregard the disproportionately underrepresented group." *Id.* at 105. According to the Court, the plaintiffs failed to provide any such evidence and, therefore, failed to establish an equal protection violation.

The three-judge panel in *Badham v. Fong Eu*[12] applied the *Bandemer* standard and concluded that the plaintiffs there had not satisfied their burden of alleging that California's congressional redistricting plan resulted in Republicans being shut out of the political process as a whole. 694 F. Supp. At 670-71. In that case, an outgoing Democratic Governor colluded with the Democratic majority in the state legislature to pass a congressional redistricting plan that heavily favored Democratic candidates. In the first election held under that plan, republicans received 50.1% of the vote statewide, but received only 40% of the congressional seats (eighteen of forty-five). The defendants filed a Rule 12(b)(6) motion to dismiss. The panel granted the motion holding that the plaintiffs had failed to allege facts that,

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[12]Although the Supreme Court did not grant *certiorari* to hear the *Badham* case, it did summarily affirm the three-judge panel's decision. *See Badham v. Eu*, 488 U.S. 1024 (1989). Unlike a denial of *certiorari*, a summary affirmation by the Supreme Court creates precedential authority binding on the lower courts. *See* 12 Moore's Federal Practice ¶400.05-1 (3d ed. 1999). This authority extends only to the judgment's result, and not the underlying reasoning. *Mandel v. Bradley*, 432 U.S. 173, 176 (1977). "Nevertheless, due in particular to the fact that the *Bandemer* Court was unable to agree on a majority opinion, we believe that the *Badham* court's interpretation of *Bandemer*, subsequently affirmed by the Supreme Court, is entitled to substantial deference." *Pope v. Blue*, 809 F. Supp. at 395 n.2.

if proven, would demonstrate an actual discriminatory effect on California Republicans. The *Badham* panel focused its analysis on the effects the plan would have on California's political landscape as a whole.

> It is on this second prong of the "effects" threshold that plaintiffs' complaint falters. Specifically, there are no factual allegations regarding California Republicans' role in the political process as a whole. . . . There are no allegations that California Republicans have been "shut out" of the political process, nor are there allegations that anyone has ever interfered with Republican registration, organizing, voting, fund-raising, or campaigning. Republicans remain free to speak out on issues of public concern; plaintiffs do not allege that there are, or have been, any impediments to their full participation in the uninhibited, robust, and wide-open public debate on which our political system relies. . .
>
> Particularly conspicuous by its absence is any allegation that plaintiffs' interests are being entirely ignored by their congressional representatives. . . .Instead, plaintiffs claim that Democratic incumbents will be reelected without need to attend to the views of fragmented and submerged Republican minorities in their districts. . .Nowhere do plaintiffs suggest that they can prove disregard by any means other than by inference from the election results, a method which *Bandemer* removes from our purview.

Badham, 694 F. Supp. at 670-71 (internal quotations

omitted).

In this case, Plaintiffs' allegations amount to this; Act 1 is rigged to guarantee that thirteen of Pennsylvania's nineteen congressional representatives will be Republicans. As a result, Democrats will have a more difficult time electing their candidates. Due to this impediment, "the Democratic Party will have greater difficulty in fielding competitive candidates." (Amd. Comp. at ¶35.) Thus, Act 1 operates "to essentially shut Democrats and Democratic voters out of the political process." (*Id.* at §36.) Plaintiffs, in particular, "will suffer harm. . .[because they] will now be increasingly represented by members of Congress who do not represent their views." (*Id.* at 37).

As *Bandemer* and *Barham* dictate, these allegations are insufficient to make out a cause of action for violation of equal protection. First, Plaintiffs' allegation that Republicans will earn a super-majority of the congressional representatives despite their status as a minority party statewide is simply an argument for proportional representation. However, *Baedeker* soundly rejected such a basis for an equal protection violation. *See* 478 U.S. at 130 ("Our cases, however, clearly foreclose any claim that the Constitution requires proportional representation or that legislatures in reapportioning must draw district lines to come as near as possible to allocating seats to the contending parties in proportion to what their anticipated statewide vote will be.")

Second, *Bandemer* was equally forceful in rejecting the presumption that voters who vote for losing candidates will not be adequately represented. *See id.* at 132 ("An individual or a group of individuals who votes for a losing candidate is usually deemed to be adequately represented by the winning candidate and has as much

opportunity to influence that candidate as other voters in the district."). Therefore, Plaintiffs' allegation that they will be represented in Congress by Republicans who do not share their views bears no weight in our analysis.

Third, Plaintiffs' allegations that, due to Act 1, the Democratic party will have a greater difficulty in fielding competitive candidates is irrelevant. The focus in our inquiry is on the effect that the redistricting plan will have on an identifiable political group. In this case, as previously stated, that group is Pennsylvania Democratic *voters*. Therefore, the fucus is on the effect Act 1 will have on the voters' ability to participate in the political process, not the Democratic party's health in Pennsylvania. The Constitution protects against partisan gerrymandering only because of the effect that it has on the individual's ability to exercise the fundamental right to vote. It goes without saying that political parties, although the principal players in the political process, do not have the right to vote. Therefore, their health is a non-issue in the constitutional analysis. Stripped to its bones, Plaintiffs' allegations, in this respect, amount to a claim that Act 1 will make it more difficult for them to elect Democratic candidates to Congress. However, this simply is not the end-all be-all constitutional analysis that Plaintiffs make it out to be.

> [T]he mere fact that a particular apportionment scheme makes it more difficult for a particular group in a particular district to elect representatives of its choice does not render that scheme constitutionally infirm. This conviction, in turn, stems from a perception that the power to influence the political process is not limited to winning elections. . . .Thus, a group's electoral power is not unconstitutionally diminished by the simple

> fact of an apportionment scheme makes winning elections more difficult, and a failure of proportional representation alone does not constitute impermissible discrimination under the Equal Protection Clause.

Id. at 131-32.

Finally, we find that Plaintiffs' allegations do not indicate that Act 1 "essentially shuts. . .Democratic voters out of the political process." (Amend. Compl. at ¶36.) While Plaintiffs employ this phrase in their complaint, these words do not have the talismanic effect of converting Act 1 into an actionable constitutional violation. *See Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997) (holding that when deciding a Rule 12(b)(6) motion to dismiss, the court must treat a plaintiff's allegations as true, but need not give such credence to legal conclusions). While Plaintiffs allege that Democratic members of the Pennsylvania General Assembly were shut out of the redistricting process, there are no allegations that anyone has ever prevented, or will ever prevent, Plaintiffs from: registering to vote; organizing with other like-minded voters; raising funds on behalf of candidates; voting; campaigning; or speaking out on matters of public concern. *See Badham*, 694 F. Supp. at 670. Act 1 simply does not address such issues. In short, "[P]laintiffs doe not allege that there are, or ever have been, any impediments to their full participation in the 'uninhibited, robust, wide-open' public debate on which our political system relies." *Id.* (quoting *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964)).

In summation, Plaintiffs have not alleged facts indicating that they have been shut out of the political process and, therefore, they cannot establish an actual discriminatory effect on them. Because the court holds

that Plaintiffs' allegations are insufficient to pass the threshold effects analysis, the court will dismiss that portion of the complaint alleging that Act 1 violates the Equal Protection Clause.

3. Privileges and Immunities

In Count III of the amended complaint, Plaintiffs assert that Act 1 violates their rights pursuant to the Privileges and Immunities Clause of the Fourteenth Amendment.[13] However, the Third Circuit has recognized that "the Privileges and Immunities Clause of the Fourteenth Amendment has 'remained essentially moribund' since the Supreme Court's decision in *The Slaughter House Cases*, 83 U.S. (16 Wall.) 36 (1872), and the Supreme Court has subsequently relied almost exclusively on the Due Process Clause as the source of enumerated rights." *In re Sacred Heath Hosp.*, 133 F.3d 237, 244 (3d Cir. 1997).

Plaintiffs, though, argue that Act 1 "grants Republicans their right to be free of a district that does not impermissibly burden their rights to an undiluted vote, but it denies that right to Democrats." (Pls. Br. in Opp. Mot. To Dis. at 20.) Therefore, according to Plaintiffs, there must be some legitimate governmental purpose for Defendants' actions. In support for this contention, Plaintiffs rely entirely upon *Saenz v. Roe*, 526 U.S. 489 (1999). In *Saenz*, the Court held unconstitutional a California statute that limited the welfare benefits of new residents during their first year of residency in that state. The statute, the Court reasoned,

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[13]In relevant part, the Fourteenth Amendment reads: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. . . ." U.S. Const. amend. XIV, §1.

violated the fundamental right of citizens to travel from state to state. In making this determination, the Court held that the statute violated the third element of the right to travel - the right of the newly - arrived citizen to enjoy the same privileges and immunities "enjoyed by other citizens of the same State." *Id.* at 502.

Plaintiffs, however, do not explain how the right to travel, which apparently is protected in some part y the Privileges and Immunities Clause, translates into a right to have proportional representation with Republican voters. Simply put, the Privileges and Immunities Clause, which protects against discrimination on the basis of state citizenship, has nothing to do with this case. In this case, there are no allegations that Plaintiffs are newly - arrived citizens of Pennsylvania or that they are citizens of other states. In fact, the amended complaint clearly states that both Plaintiffs and Defendants are citizens of Pennsylvania. (*See* Amd. Compl. at ¶¶2-5.) Because Plaintiffs have failed to allege a cause of action for violation of the Privileges and Immunities Clause, the court will dismiss Count III of the amended complaint.

4. First Amendment

In Count IV of the amended complaint, Plaintiffs assert that Act 1 violates their right to free association as guaranteed to them by the First Amendment. The gravamen of Plaintiffs' claims is that Act 1 constitutes a governmental classification based on political affiliation and, thus, violates their right to free association.

It is well established that the "First Amendment protects political association as well as political expression." *Buckley v. Valeo*, 424 U.S. 1, 15 (1976). However, Plaintiffs fail to explain how Act 1 penalizes them for their exercise of First Amendment rights. Instead, Plaintiffs try to analogize their claim to a ballot

access denial or a denial of the right to vote. However, nowhere in Plaintiffs' amended complaint do they allege that Act 1 prevents them from voting or having access to the ballot. Instead, Plaintiffs imply that Act 1 makes it more difficult for them to exercise these rights.

It is true that the First Amendment guarantees participation in the political process. However, as the legion of case law and common sense dictate, it does not guarantee that such participation will be successful. *Accord Republican Party v. Martin*, 980 F.2d 943, 960 (4th Cir. 1992); *Pope v. Blue*, 809 F. Supp. at 398; *Badham*, 694 F. Supp. at 675. "Because there is 'no device that directly inhibits participation in the political process,' [Plaintiffs'] freedom of association claim boils down to the argument that they are entitled to political success." *Pope*, 809 at 398. This is a right which the Constitution does not guarantee. Therefore, we hold that the Plaintiffs' freedom of association claim is coextensive with their equal protection claim. *Accord Id.* As discussed above, *see supra.* Part II.V.3, Plaintiffs have not stated a claim for a recognized violation of the Fourteenth Amendment. Therefore, the court will dismiss Plaintiffs' claim in Count IV for failure to state a claim for violation of their First Amendment right to free association.

5. 42 U.S.C. §1983

In Count V, Plaintiffs assert a claim based on violation of 42 U.S.C. §1983. However, as previously stated, *see supra.* at 6, n.6, "§1983 does not create substantive rights but 'merely redresses the deprivation of. . .rights. . .created by the Constitution or federal statute.'" *Ridgewood Bd. of Educ. v. N.E. for M.E.*, 178 F.3d 238, 251-52 (3d Cir. 1999)(quoting *W.B. v. Matula*, 67 F.3d 484, 493 (3d Cir. 1995)). Accordingly, the court has construed Plaintiffs' amended complaint as an action brought pursuant to §1983 to vindicate their rights under

the Constitution. Therefore, to the extent that Plaintiffs seek an independent basis for recovery, Count V will be dismissed.

6. Relief Sought

Finally, Defendants contend that the remainder of Plaintiffs complaint must be dismissed because the court cannot grant the type of relief which Plaintiffs request. Specifically, Defendants rely upon *Growe v. Emison*, 507 U.S. 25, 34 (1993), for the proposition that the court is without power to create a new redistricting plan. That is, even if the court determines that Act 1 is unconstitutional, we must defer to the State legislature or judicial system to create a new plan. However, the court need not address that issue at this time. Plaintiffs request that the court grant a declaratory judgment that Act 1 violates the one person-one vote requirement of Article I. Clearly, the court has the remedial power to issue such a declaratory judgment.

III. Conclusion

As to the Defendant Executive Officers' motion to dismiss for lack of subject matter jurisdiction, the court will grant that motion in part and will deny it in part. The court will grant the motion as to Defendant Commonwealth of Pennsylvania, which will be dismissed from the suit on the basis of Eleventh Amendment sovereign immunity. The court, however, will deny the motion in all other respects. Because the court finds that Plaintiffs have standing to sue, the court will deny Defendant Presiding Officers' motion to dismiss for lack of subject matter jurisdiction. Additionally, as to the motions to dismiss for failure to state a claim, the court will grant both motions in part and deny both motions in part. The court holds that Plaintiffs have alleged a valid cause of action for violation of the one person-one vote

requirement of Article I. Accordingly, the motions will be denied as to Count I of the amended complaint. However, the court will grant the motion as to Counts II, III, IV and V. An appropriate order will issue.

Dated: February 22, 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, NORMA JEAN VIETH, and SUSAN FUREY,	**: Civil No. 1:CV-01-2439**
Plaintiffs	**: NYGAARD, Circuit Judge**
v.	**: YOHN, District Judge**
COMMONWEALTH OF PENNSYLVANIA, *et al.*,:	**: RAMBO, District Judge**
Defendants	**:**

ORDER

In accordance with the accompanying memorandum of law, **IT IS HEREBY ORDERED THAT:**

(1) Defendant Executive Officers' motion to dismiss pursuant to Rule 12(b)(1) is **GRANTED IN PART** and **DENIED IN PART**, as follows:

> (A) As to Defendant Commonwealth of Pennsylvania, the motion is **GRANTED**, all claims against the Commonwealth are dismissed;
>
> (B) In all other respects, the motion is **DENIED**;

(2) Defendant Presiding Officers' motion to dismiss pursuant to Rule 12(b)(1) is **DENIED**;

(3) Defendant Executive Officers' motion to dismiss pursuant to Rule 12(b)(6) is **GRANTED IN PART** and

DENIED IN PART, as follows:

(A) The motion is **GRANTED** as to Counts II, III, IV and V of the amended complaint;

(B) The motion is **DENIED** as to Count I of the amended complaint;

(4) Defendant Presiding Officers' motion to dismiss pursuant to Rule 12(b)(6) is **GRANTED IN PART** and **DENIED IN PART**, as follows:

(A) The motion is **GRANTED** as to Counts II, III, IV and V of the amended complaint;

(B) The motion is **DENIED** as to Count I of the amended complaint.

/s/Richard L. Nygaard
RICHARD L. NYGAARD
United States Circuit Judge

/s/ William H. Yohn
WILLIAM H. YOHN
United States District Judge

/s/ Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: February 22, 2002

Pa.Stat.Ann., tit 25, (Purdon)

§ 3595.1. Congressional districts

For the purpose of electing representatives of the people of Pennsylvania to serve in the House of Representatives in the Congress of the United States, this Commonwealth shall be divided into 19 districts which shall have one Congressman each, as follows:

(1) The First District is composed of part of Delaware County consisting of the City of Chester and the Townships of Chester, Darby Wards 1 and 2, Ridley Ward 1 (Division 2) and Tinicum Wards 1, 2 and 4 and the Boroughs of Colwyn, Darby, Eddystone and Yeadon; and part of Philadelphia County consisting of the City of Philadelphia Wards 1, 2, 3, 4, 5, 7, 10, 14, 15 (Divisions 3, 7, 10, 15, 16, 17 and 19), 17, 18, 19, 20, 23 (Divisions 1, 2, 3, 4, 5, 6, 7, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23), 25, 26 (Divisions 2 and 23), 31, 33 (Divisions 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24), 34, 37, 39, 40, 42, 43, 49 (Divisions 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 21, 22 and 23), 53 (Divisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 22 and 23), 54 and 62 (Divisions 7, 10, 11, 14, 20 and 23).

(2) The Second District is composed of part of Montgomery County consisting of the Township of Cheltenham; and part of Philadelphia County consisting of the City of Philadelphia Wards 6, 8, 9, 11, 12, 13, 15 (Divisions 1, 2, 4, 5, 6, 8, 9, 11, 12, 13, 14 and 18), 16, 21, 22, 23 (Divisions 8, 10, 11 and 12), 24, 26 (Divisions 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 24), 27, 28, 29, 30, 32, 33 (Divisions 2 and 3), 35 (Divisions 1, 13, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30 and 31), 36, 38, 44, 46, 47, 48, 49 (Divisions 7, 8, 18, 20, 24 and 25), 50, 51, 52, 59, 60 and 61.

(3) The Third District is composed of part of Armstrong County consisting of the Townships of Boggs, Bradys Bend, Cowanshannock, East Franklin, Hovey, Kittanning, Madison, Mahoning, Perry, Pine, Rayburn, Redbank, South Buffalo District Western, Sugarcreek, Valley, Washington, Wayne and West Franklin and the Boroughs of Applewold, Atwood, Dayton, Parker City, Rural Valley, South Bethlehem, West Kittanning and Worthington; part of Butler County consisting of the City of Butler and the Townships of Allegheny, Brady, Butler, Center, Cherry, Clay, Clearfield, Concord, Connoquenessing, Donegal, Fairview, Forward, Franklin, Jefferson, Marion, Mercer, Muddy Creek, Oakland, Parker, Penn, Slippery Rock, Summit, Venango, Washington, Winfield and Worth and the Boroughs of Bruin, Callery, Cherry Valley, Chicora, Connoquenessing, East Butler, Eau Claire, Evans City, Fairview, Harrisville, Karns City, Petrolia, Portersville, Prospect, Saxonburg, Slippery Rock, West Liberty and West Sunbury; part of Crawford County consisting of the City of Meadville and the Townships of Athens, Beaver, Bloomfield, Cambridge, Conneaut, Cussewago, East Fairfield, East Fallowfield, East Mead, Fairfield, Greenwood, Hayfield, North Shenango, Pine, Randolph, Richmond, Rockdale, Sadsbury, South Shenango, Sparta, Spring, Steuben, Summerhill, Summit, Troy, Union, Venango, Vernon, Wayne, West Fallowfield, West Mead, West Shenango and Woodcock and the Boroughs of Blooming Valley, Cambridge Springs, Centerville, Cochranton, Conneaut Lake, Conneautville, Linesville, Saegertown, Spartansburg, Springboro, Townville, Venango and Woodcock; all of Erie County; part of Mercer County consisting of the Cities of Hermitage Districts Ne, Nw, Se and Sw (Divisions 1 and 2) and Sharon and the Townships of Coolspring, Deer Creek, Delaware, East Lackawannock, Fairview, Findley, French Creek, Greene, Hempfield, Jackson, Jefferson, Lackawannock, Lake, Liberty, Mill Creek, New Vernon, Otter Creek, Perry, Pine, Pymatuning, Salem, Sandy

Creek, Sandy Lake, South Pymatuning, Springfield, Sugar Grove, West Salem, Wilmington, Wolf Creek and Worth and the Boroughs of Clark, Fredonia, Greenville, Grove City, Jackson Center, Jamestown, Mercer, New Lebanon, Sandy Lake, Sharpsville, Sheakleyville and Stoneboro; part of Venango County consisting of the Townships of Clinton, Irwin, Richland, Rockland and Scrubgrass and the Boroughs of Barkeyville, Clintonville and Emlenton; and part of Warren County consisting of the City of Warren and the Townships of Brokenstraw, Columbus, Eldred, Farmington, Freehold, Glade, Pine Grove, Spring Creek, Sugar Grove and Triumph and the Boroughs of Bear Lake, Sugar Grove and Youngsville.

(4) The Fourth District is composed of part of Allegheny County consisting of the Townships of Aleppo, East Deer Ward 1, Fawn, Frazer, Hampton, Harmar, Harrison, Indiana, Kilbuck, Leet, Marshall, McCandless, O'Hara Wards 1 (Division 1), 2, 3, 4 and 5, Ohio, Pine, Richland, Ross, Shaler, Springdale and West Deer and the Boroughs of Aspinwall, Avalon Ward 3 (Division 1), Bell Acres, Ben Avon, Ben Avon Heights, Brackenridge (Wards 01 (all blocks except 4019, 4025 and 4999 of tract 402000), 02 and 03), Bradford Woods, Cheswick, Edgeworth, Emsworth, Etna Ward 3, Fox Chapel, Franklin Park, Glenfield, Haysville, Leetsdale, Oakmont, Osborne, Plum, Sewickley, Sewickley Heights, Sewickley Hills, Springdale and West View; all of Beaver County; part of Butler County consisting of the Townships of Adams, Buffalo, Clinton, Cranberry, Jackson, Lancaster and Middlesex and the Boroughs of Harmony, Mars, Seven Fields, Valencia and Zelienople; all of Lawrence County; part of Mercer County consisting of the Cities of Farrell and Hermitage District Sw (Division 3) and the Township of Shenango and the Boroughs of West Middlesex and Wheatland; and part of Westmoreland County consisting of the Boroughs of Delmont, Export and Murrysville.

(5) The Fifth District is composed of all of Cameron County; all of Centre County; all of Clarion County; part of Clearfield County consisting of the City of DuBois and the Townships of Bell, Bigler, Bloom, Boggs, Bradford, Brady, Cooper, Covington, Decatur, Ferguson, Girard, Goshen, Graham, Greenwood, Huston, Karthaus, Lawrence, Morris, Penn, Pike, Pine, Sandy, Union and Woodward and the Boroughs of Brisbin, Chester Hill, Clearfield, Curwensville, Glen Hope, Grampian, Houtzdale, Lumber City, Mahaffey, Osceola Mills, Troutville and Wallaceton; all of Clinton County; part of Crawford County consisting of the City of Titusville and the Townships of Oil Creek and Rome and the Borough of Hydetown; all of Elk County; all of Forest County; all of Jefferson County; part of Lycoming County consisting of the Townships of Anthony, Armstrong, Bastress, Brady, Brown, Clinton, Cummings, Fairfield, Limestone, McHenry, Mifflin, Nippenose, Old Lycoming, Piatt, Pine, Porter, Susquehanna, Washington, Watson and Woodward and the Boroughs of Duboistown, Jersey Shore, Montgomery, Montoursville, Salladasburg and South Williamsport; all of McKean County; part of Mifflin County consisting of the Townships of Armagh, Brown, Decatur, Derry and Granville and the Boroughs of Burnham, Juniata Terraceand Lewistown; all of Potter County; all of Tioga County; part of Venango County consisting of the Cities of Franklin and Oil City and the Townships of Allegheny, Canal, Cherrytree, Cornplanter, Cranberry, Frenchcreek, Jackson, Mineral, Oakland, Oil Creek, Pinegrove, Plum, President, Sandycreek and Victory and the Boroughs of Cooperstown, Pleasantville, Polk, Rouseville, Sugarcreek and Utica; and part of Warren County consisting of the Townships of Cherry Grove, Conewango, Deerfield, Elk, Limestone, Mead, Pittsfield, Pleasant, Sheffield, Southwest and Watson and the Boroughs of Clarendon and Tidioute.

(6) The Sixth District is composed of part of Berks

County consisting of the City of Reading Wards 3 (Division 2), 9 (Division 5), 10, 12 (Division 5), 13 (Divisions 4 and 5), 14, 15 (Division 9), 16, 17 and 18 (Divisions 1; 2 and 3) and the Townships of Amity, Brecknock, Caernarvon, Colebrookdale, Cumru, District, Douglass, Earl District 2, Exeter, Hereford, Longswamp, Lower Alsace, Maxatawny, Muhlenberg District 4, Pike, Robeson, Rockland, South Heidelberg Precinct 2, Spring Districts 1, 2, 3, 4, 5, 6 and 7, Union and Washington and the Boroughs of Adamstown, Bally, Bechtelsville, Birdsboro, Boyertown, Kenhorst, Kutztown, Mohnton, Mount Penn, New Morgan, Shillington, Sinking Spring, St. Lawrence, Topton, West Lawn, West Reading, Wyomissing and Wyomissing Hills; part of Chester County consisting of the City of Coatesville and the Townships of Caln, Charlestown, East Bradford District North (all blocks except 3027 of tract 303900), East Brandywine, East Caln, East Coventry, East Nantmeal, East Pikeland, East Vincent, East Whiteland, Honey Brook, North Coventry, Pocopson, Sadsbury, Schuylkill, South Coventry, Tredyffrin, Upper Uwchlan, Uwchlan, Valley, Wallace, Warwick, West Bradford, West Brandywine, West Caln, West Nantmeal, West Pikeland, West Sadsbury, West Vincent and West Whiteland and the Boroughs of Atglen, Downingtown, Elverson, Honey Brook, Modena, Phoenixville, South Coatesville and Spring City; and part of Montgomery County consisting of the Townships of East Norriton, Limerick, Lower Merion, Perkiomen, Plymouth Districts 1, 3 (Division 2) and 4, Skippack, Whitemarsh District West (Divisions 1 and 2) and Worcester and the Boroughs of Collegeville, Narberth, Norristown, Pottstown and Trappe.

(7) The Seventh District is composed of part of Chester County consisting of the Townships of East Goshen, Easttown, Thornbury, West Goshen, Westtown and Willistown and the Borough of Malvern; part of Delaware County consisting of the Townships of Aston, Bethel,

Chadds Ford, Concord, Darby Wards 3, 4 and 5, Edgmont, Haverford, Lower Chichester, Marple, Middletown, Nether Providence, Newtown, Radnor, Ridley Wards 1 (Divisions 1 and 3), 2, 3, 4, 5, 6, 7, 8 and 9, Springfield, Thornbury, Tinicum Wards 3 and 5, Upper Chichester, Upper Darby and Upper Providence and the Boroughs of Aldan, Brookhaven, Chester Heights, Clifton Heights, Collingdale, East Lansdowne, Folcroft, Glenolden, Lansdowne, Marcus Hook, Media, Millbourne, Morton, Norwood, Parkside, Prospect Park, Ridley Park, Rose Valley, Rutledge, Sharon Hill, Swarthmore, Trainer and Upland; and part of Montgomery County consisting of the Townships of Lower Providence, Upper Merion, Upper Providence and West Norriton and the Boroughs of Bridgeport, Conshohocken, Royersford and West Conshohocken.

(8) The Eighth District is composed of all of Bucks County; part of Montgomery County consisting of the Townships of Abington Wards 5 (Division 2), 8 (Division 1) and 15 (Division 2), Upper Dublin Districts 3 and 5 (Division 2) and Upper Moreland Districts 2 and 3 (Division 2); and part of Philadelphia County consisting of the City of Philadelphia Wards 58 (Divisions 4, 6, 7, 20, 21, 22, 24, 29, 31, 39 and 41) and 66 (Divisions 2, 3, 4, 5, 6, 9, 11, 14, 16, 20, 22, 25, 30, 33, 34, 35, 36, 37, 42, 44, 45 and 46).

(9) The Ninth District is composed of all of Bedford County; all of Blair County; part of Cambria County consisting of the Townships of Allegheny, Chest, Clearfield, Dean, Elder, Gallitzin, Reade, Susquehanna and White and the Boroughs of Ashville, Chest Springs, Gallitzin, Hastings, Loretto, Northern Cambria, Patton and Tunnelhill (Cambria County portion); part of Clearfield County consisting of the Townships of Beccaria, Burnside, Chest, Gulich, Jordan and Knox and the Boroughs of Burnside, Coalport, Irvona, New Washington,

Newburg, Ramey and Westover; part of Cumberland County consisting of the Townships of Cooke, Dickinson, Hopewell, Lower Frankford, Lower Mifflin, North Middleton, North Newton, Penn, South Newton, Southampton Districts Lower and Upper (Precinct 1 and Precinct 2 only blocks 4028, 4029, 4030, 4034, 4035, 4036, 4037, 4038, 4057, 4061, 4062, 4063, 4064, 4066 and 4070 of tract 013101), Upper Frankford, Upper Mifflin and West Pennsboro and the Boroughs of Newburg and Newville; part of Fayette County consisting of the City of Connellsville Wards 3 (only blocks 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2014, 2058, 2059 and 2061 of tract 260600 and only blocks 4001, 4002 and 4003 of tract 260800), 4 and 5 and the Townships of Connellsville, Dunbar District 1, Georges Districts 1 and 2, Henry Clay, North Union District 3, South Union District 3, Springfield, Springhill District 1, Stewart and Wharton and the Boroughs of Fairchance, Markleysburg, Ohiopyle, Smithfield and South Connellsville; all of Franklin County; all of Fulton County; all of Huntingdon County; part of Indiana County consisting of the Townships of Armstrong, Banks, Black Lick, Brush Valley, Buffington, Burrell, Canoe, Center, Conemaugh, East Mahoning, East Wheatfield, Grant, Green, Montgomery, North Mahoning, Rayne, South Mahoning, Washington, West Mahoning, West Wheatfield, White Districts 3, 4 and 6 and Young and the Boroughs of Armagh, Blairsville, Cherry Tree, Creekside, Ernest, Glen Campbell, Homer City, Indiana Districts 1 and 4, Marion Center, Plumville, Saltsburg, Shelocta and Smicksburg; all of Juniata County; part of Mifflin County consisting of the Townships of Bratton, Menno, Oliver, Union and Wayne and the Boroughs of Kistler, McVeytown and Newton Hamilton; part of Perry County consisting of the Townships of Carroll, Greenwood, Howe, Jackson, Liverpool, Northeast Madison, Rye, Saville, Southwest Madison, Spring, Toboyne, Tuscarora and Tyrone and the Boroughs of Blain, Landisburg, Liverpool

and Millerstown; and part of Somerset County consisting of the Townships of Addison, Allegheny, Black, Brothersvalley, Elk Lick, Fairhope, Greenville, Larimer, Lower Turkeyfoot, Milford, Northampton, Ogle, Shade, Somerset, Southampton, Stonycreek, Summit and Upper Turkeyfoot and the Boroughs of Addison, Berlin, Callimont, Casselman, Central City, Confluence, Garrett, Indian Lake, Meyersdale, New Baltimore, New Centerville, Rockwood, Salisbury, Shanksville, Somerset, Ursina and Wellersburg.

(10) The Tenth District is composed of all of Bradford County; part of Lackawanna County consisting of the City of Carbondale and the Townships of Abington, Benton, Carbondale, Clifton, Covington, Elmhurst, Fell, Glenburn, Greenfield, Jefferson, La Plume, Madison, Newton, North Abington, Ransom, Roaring Brook, Scott, South Abington, Spring Brook, Thornhurst and West Abington and the Boroughs of Archbald, Clarks Green, Clarks Summit, Dalton, Dickson City Wards 1 (Divisions 2, 3 and 4), 2 and 3, Jermyn, Jessup Wards 1, 2 and 3 (Divisions 2 and 3), Mayfield, Moscow, Olyphant Ward 1 and Vandling; part of Luzerne County consisting of the Townships of Dallas, Exeter, Fairmount, Franklin, Kingston, Lake, Lehman and Ross and the Boroughs of Dallas, Forty Fort, Harveys Lake, Kingston, Swoyersville Wards 1 and 2, West Wyoming and Wyoming; part of Lycoming County consisting of the City of Williamsport and the Townships of Cascade, Cogan House, Eldred, Franklin, Gamble, Hepburn, Jackson, Jordan, Lewis, Loyalsock, Lycoming, McIntyre, McNett, Mill Creek, Moreland, Muncy, Muncy Creek, Penn, Plunketts Creek, Shrewsbury, Upper Fairfield and Wolf and the Boroughs of Hughesville, Muncy and Picture Rocks; all of Montour County; all of Northumberland County; all of Pike County; all of Snyder County; all of Sullivan County; all of Susquehanna County; all of UnionCounty; all of Wayne County; and all of Wyoming County.

(11) The Eleventh District is composed of all of Carbon County; all of Columbia County; part of Lackawanna County consisting of the City of Scranton and the Boroughs of Blakely, Dickson City Ward 1 (Division 1), Dunmore, Jessup Ward 3 (Division 1), Moosic, Old Forge, Olyphant Wards 2, 3 and 4, Taylor and Throop; part of Luzerne County consisting of the Cities of Hazleton, Nanticoke, Pittston and Wilkes-Barre and the Townships of Bear Creek, Black Creek, Buck, Butler, Conyngham, Dennison, Dorrance, Fairview, Foster, Hanover, Hazle, Hollenback, Hunlock, Huntington, Jackson, Jenkins, Nescopeck, Newport, Pittston, Plains, Plymouth, Rice, Salem, Slocum, Sugarloaf, Union, Wilkes- Barre and Wright and the Boroughs of Ashley, Avoca, Bear Creek Village, Conyngham, Courtdale, Dupont, Duryea, Edwardsville, Exeter, Freeland, Hughestown, Jeddo, Laflin, Larksville, Laurel Run, Luzerne, Nescopeck, New Columbus, Nuangola, Penn Lake Park, Plymouth, Pringle, Shickshinny, Sugar Notch, Swoyersville Ward 3, Warrior Run, West Hazleton, West Pittston, White Haven and Yatesville; and all of Monroe County.

(12) The Twelfth District is composed of part of Allegheny County consisting of the Township of East Deer Ward 2 and the Boroughs of Brackenridge Ward 1 (only blocks 4019, 4025 and 4999 of tract 402000) and Tarentum; part of Armstrong County consisting of the Townships of Bethel, Burrell, Cadogan, Gilpin, Kiskiminetas, Manor, North Buffalo, Parks, Plumcreek, South Bend and South Buffalo District Eastern and the Boroughs of Apollo, Elderton, Ford City, Ford Cliff, Freeport, Kittanning, Leechburg, Manorville and North Apollo; part of Cambria County consisting of the City of Johnstown and the Townships of Adams, Barr, Blacklick, Cambria, Conemaugh, Cresson, Croyle, East Carroll, East Taylor, Jackson, Lower Yoder, Middle Taylor, Munster, Portage, Richland, Stonycreek, Summerhill, Upper Yoder, Washington, West Carroll and West Taylor and the

Boroughs of Brownstown, Carrolltown, Cassandra, Cresson, Daisytown, Dale, East Conemaugh, Ebensburg, Ehrenfeld, Ferndale, Franklin, Geistown, Lilly, Lorain, Nanty Glo, Portage, Sankertown, Scalp Level, South Fork, Southmont, Summerhill, Vintondale, Westmont and Wilmore; part of Fayette County consisting of the Cities of Connellsville Wards 1, 2, 3 (all blocks except 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2014, 2058, 2059 and 2061 of tract 260600 and 4001, 4002 and 4003 of tract 260800) and 6 and Uniontown and the Townships of Brownsville, Bullskin, Dunbar Districts 2, 3 and 4, Franklin, Georges Districts 3 and 4, German, Jefferson, Lower Tyrone, Luzerne, Menallen, Nicholson, North Union Districts 1, 2, 4 and 5, Perry, Redstone, Saltlick, South Union Districts 1 and 2, Springhill District 2, Upper Tyrone and Washington and the Boroughs of Belle Vernon, Brownsville, Dawson, Dunbar, Everson, Fayette City, Masontown, Newell, Perryopolis, Point Marion and Vanderbilt; all of Greene County; part of Indiana County consisting of the Townships of Cherryhill, Pine and White Districts 1 and 2 and the Boroughs of Clymer and Indiana Districts 2 and 3; part of Somerset County consisting of the Townships of Conemaugh, Jefferson, Jenner, Lincoln, Middlecreek, Paint and Quemahoning and the Boroughs of Benson, Boswell, Hooversville, Jennerstown, Paint, Seven Springs, Stoystown and Windber; part of Washington County consisting of the Cities of Monongahela and Washington and the Townships of Canton, Carroll Districts 2, 3 and 5, Chartiers Districts 3, 5, 6 and 7, East Bethlehem, Fallowfield Districts 1, 2 and 4, North Bethlehem, North Strabane Districts 2, 3 and 5 (only blocks 3016, 3017, 4004, 4005, 4006, 4007, 4011, 4012, 4013 and 4015 of tract 745100), Somerset, South Strabane Districts 2, 4 and 5, Union, West Bethlehem and West Pike Run and the Boroughs of Allenport, Beallsville, Bentleyville, California, Canonsburg Wards 2 and 3 (Division 1), Centerville, Charleroi Districts 1, 3 and 4, Coal Center,

Cokeburg, Deemston, Donora, Dunlevy, East Washington District 2, Elco, Ellsworth, Finleyville, Houston, Long Branch, Marianna, New Eagle, North Charleroi, Roscoe, Speers, Stockdale, Twilight and West Brownsville; and part of Westmoreland County consisting of the Cities of Arnold, Latrobe, Lower Burrell, Monessen and New Kensington and the Townships of Allegheny, Bell, Derry, East Huntingdon District Bessemer, Fairfield, Hempfield Districts Bovard, Hannastown and Luxor, Loyalhanna, Mount Pleasant Districts Bridgeport, Duncan, Heccla, Laurel Run, Mammoth, Spring Garden, United and Westmoreland, Rostraver, Salem Districts Hugus and Mechlings, Sewickley Districts East Herminie, Lowber, Rillton, Sewickley and West Herminie, South Huntingdon Districts Jacobs Creek, Mineral, Port Royal, Wayne, Wyano and Yukon, St. Clair, Unity Districts Crabtree, Dorothy and Lloydsville, Upper Burrell and Washington Districts North Washington and Paulton and the Boroughs of Avonmore, Bolivar, Derry, East Vandergrift, Hyde Park, Mount Pleasant, New Alexandria, New Florence, North Belle Vernon, Oklahoma, Scottdale, Seward, Smithton, Sutersville, Vandergrift, West Leechburg and West Newton.

(13) The Thirteenth District is composed of part of Montgomery County consisting of the Townships of Abington Wards 1, 2, 3, 4, 5 (Division 1), 6, 7, 8 (Division 2), 9, 10, 11, 12, 13, 14 and 15 (Division 1), Hatfield, Horsham, Lower Frederick, Lower Gwynedd, Lower Moreland, Lower Salford, Marlborough (only blocks 2002 and 2003 of tract 207600), Montgomery, New Hanover, Plymouth Districts 2 and 3 (Division 1), Springfield, Towamencin, Upper Dublin Districts 1, 2, 4, 5 (Division 1), 6 and 7, Upper Frederick, Upper Gwynedd, Upper Moreland Districts 1, 3 (Division 1), 4, 5, 6 and 7, Upper Salford, Whitemarsh Districts East, Middle and West (Division 3) and Whitpain and the Boroughs of Ambler, Bryn Athyn, Green Lane, Hatboro, Hatfield, Jenkintown,

Lansdale, North Wales, Rockledge and Schwenksville; and part of Philadelphia County consisting of the City of Philadelphia Wards 35 (Divisions 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 25 and 32), 41, 45, 53 (Divisions 17, 20 and 21), 55, 56, 57, 58 (Divisions 1, 2, 3, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 23, 25, 26, 27, 28, 30, 32, 33, 34, 35, 36, 37, 38, 40, 42, 43 and 44), 62 (Divisions 1, 2, 3, 4, 5, 6, 8, 9, 12, 13, 15, 16, 17, 18, 19, 21, 22, 24, 25 and 26), 63, 64, 65 and 66 (Divisions 1, 7, 8, 10, 12, 13, 15, 17, 18, 19, 21, 23, 24, 26, 27, 28, 29, 31, 32, 38, 39, 40, 41 and 43).

(14) The Fourteenth District is composed of part of Allegheny County consisting of the Cities of Clairton, Duquesne, McKeesport and Pittsburgh and the Townships of Elizabeth Ward 9, Kennedy, Neville, North Versailles Wards 1, 2, 3 (Division 2), 4, 5, 6 and 7, O'Hara Ward 1 (Division 2), Penn Hills Wards 1, 2, 3 (Divisions 2, 3, 4 and 5), 4 (Divisions 1, 2 and 4), 5 (Divisions 2, 3 and 4), 6 (Divisions 1, 2, 3, 4 and 6), 7 (Divisions 1, 2, 3, 4, 6 and 7), 8 and 9 (Divisions 1, 2 and 5), Reserve, Robinson Districts 3 and 5, Stowe and Wilkins Ward 2 (Division 2) and the Boroughs of Avalon Wards 1, 2 and 3 (Divisions 2 and 3), Baldwin Districts 1, 2, 3, 4, 5, 9, 11, 12, 13, 15, 16 and 18, Bellevue, Blawnox, Braddock, Braddock Hills, Chalfant, Coraopolis, Crafton Wards 1, 2 and 3 (Division 1), Dravosburg, East McKeesport, East Pittsburgh, Edgewood, Etna Wards 1 and 2, Forest Hills, Glassport, Homestead, Ingram, Liberty, Lincoln, McKees Rocks, Millvale, Monroeville Wards 1 (Division 1) and 7, Mount Oliver, Munhall, North Braddock, Pitcairn Districts 2 and 3, Port Vue, Rankin, Sharpsburg, Swissvale, Turtle Creek, Verona, Versailles, Wall, West Homestead, West Mifflin, Whitaker, Wilkinsburg and Wilmerding.

(15) The Fifteenth District is composed of all of Lehigh County; part of Montgomery County consisting of the Townships of Douglass, Franconia, Lower Pottsgrove,

Marlborough, (all blocks except 2002 and 2003 of tract 207600), Salford, Upper Hanover, Upper Pottsgrove and West Pottsgrove and the Boroughs of East Greenville, Pennsburg, Red Hill, Souderton and Telford (Montgomery County portion); and all of Northampton County.

(16) The Sixteenth District is composed of part of Berks County consisting of the City of Reading Wards 1, 2, 3 (Division 1), 4, 5, 6, 7, 8, 9 (Division 2), 11, 12 (Divisions 1 and 3), 13 (Divisions 1 and 2), 15 (Divisions 1, 2, 6 and 7), 18 (Division 4) and 19 and the Townships of Bern District 3, Lower Heidelberg, South Heidelberg Precinct 1 and Spring District 8 and the Borough of Wernersville; part of Chester County consisting of the Townships of Birmingham, East Bradford Districts North (only block 3027 of tract 303900) and South, East Fallowfield, East Marlborough, East Nottingham, Elk, Franklin, Highland, Kennett, London Britain, London Grove, Londonderry, Lower Oxford, New Garden, New London, Newlin, Penn, Pennsbury, Upper Oxford, West Fallowfield, West Marlborough and West Nottingham and the Boroughs of Avondale, Kennett Square, Oxford, Parkesburg, West Chester and West Grove; and all of Lancaster County.

(17) The Seventeenth District is composed of part of Berks County consisting of the Townships of Albany, Alsace, Bern Districts 1 and 2, Bethel, Centre, Earl District 1, Greenwich, Heidelberg, Jefferson, Maidencreek, Marion, Muhlenberg Districts 1, 2, 3, 5, 6, 7 and 8, North Heidelberg, Oley, Ontelaunee, Penn, Perry, Richmond, Ruscombmanor, Tilden, Tulpehocken, Upper Bern, Upper Tulpehocken and Windsor and the Boroughs of Bernville, Centerport, Fleetwood, Hamburg, Laureldale, Leesport, Lenhartsville, Lyons, Robesonia, Shoemakersville, Strausstown and Womelsdorf; all of Dauphin County; all of Lebanon County; part of Perry County consisting of the Townships of Buffalo, Centre, Juniata, Miller, Oliver, Penn, Watts and Wheatfield and

the Boroughs of Bloomfield, Duncannon, Marysville, New Buffalo and Newport; and all of Schuylkill County.

(18) The Eighteenth District is composed of part of Allegheny County consisting of the Townships of Baldwin, Collier, Crescent, Elizabeth Wards 1, 2, 3, 4, 5, 6, 7 and 8, Findlay, Forward, Moon, Mount Lebanon, North Fayette, North Versailles Ward 3 (Divisions 1, Penn Hills Wards 3 (Divisions 1 and 6), 4 (Divisions 3 and 5), 5 (Divisions 1, 5 and 6), 6 (Division 5), 7 (Division 5) and 9 (Divisions 3 and 4), Robinson Districts 1, 2, 4, 6, 7, 8 and 9, Scott, South Fayette, South Park, South Versailles, Upper St. Clair and Wilkins Wards 1 and 2 (Division 1) and the Boroughs of Baldwin Districts 6, 7, 8, 10, 14 and 17, Bethel Park, Brentwood, Bridgeville, Carnegie, Castle Shannon, Churchill, Crafton Ward 3 (Division 2), Dormont, Elizabeth, Green Tree, Heidelberg, Jefferson Hills, McDonald (Allegheny County portion), Monroeville Wards 1 (Divisions 2, 3 and 4), 2, 3, 4, 5 and 6, Oakdale, Pennsbury Village, Pitcairn District 1, Pleasant Hills, Rosslyn Farms, Thornburg, Trafford (Allegheny County portion), West Elizabeth, White Oak and Whitehall; part of Washington County consisting of the Townships of Amwell, Blaine, Buffalo, Carroll Districts 1 and 4, Cecil, Chartiers Districts 1, 2 and 4, Cross Creek, Donegal, East Finley, Fallowfield District 3, Hanover, Hopewell, Independence, Jefferson, Morris, Mount Pleasant, North Franklin, North Strabane Districts 1, 4, 5 (all blocks except blocks 3016, 3017, 4004, 4005, 4006, 4007, 4011, 4012, 4013 and 4015 of tract 745100) and 6, Nottingham, Peters, Robinson, Smith, South Franklin, South Strabane Districts 1 and 3 and West Finley and the Boroughs of Burgettstown, Canonsburg Wards 1 and 3 (Division 3), Charleroi Districts 2 and 6, Claysville, East Washington District 1, Green Hills, McDonald, Midway, West Alexander and West Middletown; and part of Westmoreland County consisting of the Cities of Greensburg and Jeannette and the Townships of Cook,

Donegal, East Huntingdon Districts Ruffsdale, Stoners, Strohms and Whites, Hempfield Districts Alwine, Carbon, East Adamsburg, Eastview, Fort Allen, Foxhill, Gayville, Grapeville, Haydenville, High Park, Lincoln Heights, Lincoln Heights West, Maplewood, Middletown, New Stanton, North Carbon, Sibel, Todd, University, Valley, Weavers Old Stand, Wegley, Wendel Herm, West Hempfield and West Point, Ligonier, Mount Pleasant Districts Pleasant Valley and Ridgeview, North Huntingdon, Penn, Salem Districts Five Points, New Salem, Slickville, Steeles and Trees Mills, Sewickley District Whyel, South Huntingdon Districts Hixon and South Huntingdon, Unity Districts Baggaley, Beatty, Dennison, Gravel Hill, Kuhns, Marguerite, Mutual, Pleasant Unity, Roble and Whitney and Washington Districts Beamers and Oakland X Roads and the Boroughs of Adamsburg, Arona, Donegal, Hunker, Irwin, Laurel Mountain, Ligonier, Madison, Manor, New Stanton, North Irwin, Penn, South Greensburg, Southwest Greensburg, Trafford (Westmoreland County portion), Youngstown and Youngwood.

(19) The Nineteenth District is composed of all of Adams County; part of Cumberland County consisting of the Townships of East Pennsboro, Hampden, Lower Allen, Middlesex, Monroe, Shippensburg, Silver Spring, South Middleton, Southampton District Upper (Precinct 2 all blocks except 4028, 4029, 4030, 4034, 4035, 4036, 4037, 4038, 4057, 4061, 4062, 4063, 4064, 4066 and 4070 of tract 013101) and Upper Allen and the Boroughs of Camp Hill, Carlisle, Lemoyne, Mechanicsburg, Mount Holly Springs, New Cumberland, Shippensburg (Cumberland County portion), Shiremanstown and Wormleysburg; and all of York County.

Pa.Stat.Ann., tit 25, (Purdon)
§3595.101 Short title

This act shall be known and may be cited as the Congressional Redistricting Act of 2002.

§3595.102 Definitions

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:
"Act 1 of 2002." The act of January 7, 2002 (P.L. 1, No. 1), [25 P.S. §3595.1, et seq.] entitled "An act to apportion the Commonwealth of Pennsylvania into congressional districts in conformity with constitutional requirements; providing for the nomination and election of Congressmen; and requiring publication of notice of the establishment of congressional districts following the Federal decennial census."
"Secretary." The Secretary of the Commonwealth.

§3595.301 Congressional Districts

For the purpose of electing representatives of the people of Pennsylvania to serve in the House of Representatives in the Congress of the United States, this Commonwealth shall be divided into 19 districts which shall have one Congressman each, as follows:

(1) The First District is composed of part of Delaware County consisting of the City of Chester and the Townships of Chester, Darby Wards 1 and 2, Ridley Ward 1 (Division 2) and Tinicum Wards 1, 2 and 4 and the Boroughs of Colwyn, Darby, Eddystone and Yeadon; and part of Philadelphia County consisting of the City of Philadelphia Wards 1, 2, 3, 4, 5, 7, 10, 14, 15 (Divisions 3, 7, 10, 15, 16, 17 and 19), 17, 18, 19, 20, 23 (Divisions 1, 2, 3, 4, 5, 6, 7, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

and 23), 25 (Divisions 1, 2, 4, 5,6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24), 26 (Divisions 2 and 23), 31, 33 (Divisions 1, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24), 34, 37, 39, 40, 42, 43, 45 (Division 19), 49 (Divisions 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 21, 22 and 23), 53 (Divisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 22 and 23), 54, 55 (Division 15), 61 (Division 1) and 62 (Divisions 7, 10, 11, 14, 20 and 23).

(2) The Second District is composed of part of Montgomery County consisting of the Township of Cheltenham; and part of Philadelphia County consisting of the City of Philadelphia Wards 6, 8, 9, 11, 12, 13, 15 (Divisions 1, 2, 4, 5, 6, 8, 9, 11, 12, 13, 14 and 18), 16, 21, 22, 23 (Divisions 8, 10, 11 and 12), 24, 26 (Divisions 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 24), 27, 28, 29, 30, 32, 33 (Divisions 2, 3 and 11), 35 (Divisions 1, 13, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30 and 31), 36, 38, 44, 46, 47, 48, 49 (Divisions 7, 8, 18, 20, 24 and 25), 50, 51, 52, 59, 60 and 61 (Divisions 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28).

(3) The Third District is composed of part of Armstrong County consisting of the Townships of Boggs, Bradys Bend, Cadogan, Cowanshannock, East Franklin, Hovey, Kittanning, Madison, Mahoning, North Buffalo District Western, Perry, Pine, Rayburn, Redbank, South Buffalo District Western, Sugarcreek, Valley, Washington, Wayne and West Franklin and the Boroughs of Applewold, Atwood, Dayton, Parker City, Rural Valley, South Bethlehem, West Kittanning and Worthington; part of Butler County consisting of the City of Butler and the Townships of Allegheny, Brady, Butler, Center, Cherry, Clay, Clearfield, Concord, Connoquenessing, Donegal, Fairview, Forward, Franklin, Jefferson, Marion, Mercer, Muddy Creek, Oakland, Parker, Penn, Slippery Rock,

Summit, Venango, Washington, Winfield and Worth and the Boroughs of Bruin, Cherry Valley, Chicora, Connoquenessing, East Butler, Eau Claire, Evans City, Fairview, Harrisville, Karns City, Petrolia, Portersville, Prospect, Saxonburg, Slippery Rock, West Liberty and West Sunbury; part of Crawford County consisting of the City of Meadville and the Townships of Athens, Beaver, Bloomfield, Cambridge, Conneaut, Cussewago, East Fairfield, East Fallowfield, East Mead, Fairfield, Greenwood, Hayfield, North Shenango, Pine, Randolph, Richmond, Rockdale, Sadsbury, South Shenango, Sparta, Spring, Steuben, Summerhill, Summit, Troy, Union, Venango, Vernon, Wayne, West Fallowfield, West Mead, West Shenango and Woodcock and the Boroughs of Blooming Valley, Cambridge Springs, Centerville, Cochranton, Conneaut Lake, Conneautville, Linesville, Saegertown, Spartansburg, Springboro, Townville, Venango and Woodcock; all of Erie County; part of Mercer County consisting of the Cities of Hermitage Districts Ne, Nw, Se and Sw (Division 1) and Sharon and the Townships of Coolspring, Deer Creek, Delaware, East Lackawannock, Fairview, Findley, French Creek, Greene, Hempfield, Jackson, Jefferson, Lackawannock, Lake, Liberty, Mill Creek, New Vernon, Otter Creek, Perry, Pine, Pymatuning, Salem, Sandy Creek, Sandy Lake, South Pymatuning, Springfield, Sugar Grove, West Salem, Wilmington, Wolf Creek and Worth and the Boroughs of Clark, Fredonia, Greenville, Grove City, Jackson Center, Jamestown, Mercer, New Lebanon, Sandy Lake, Sharpsville, Sheakleyville and Stoneboro; part of Venango County consisting of the Townships of Clinton, Irwin, Richland, Rockland and Scrubgrass and the Boroughs of Barkeyville, Clintonville and Emlenton; and part of Warren County consisting of the City of Warren and the Townships of Brokenstraw, Columbus, Eldred, Farmington, Freehold, Glade, Pine Grove, Spring Creek, Sugar Grove and Triumph and the Boroughs of Bear Lake, Sugar Grove and Youngsville.

(4) The Fourth District is composed of part of Allegheny County consisting of the Townships of Aleppo, East Deer Ward 1, Fawn, Frazer, Hampton, Harmar, Harrison, Indiana, Kilbuck, Leet, Marshall, McCandless, Neville Ward 3, O'Hara Wards 1 (Division 1), 2, 3, 4 and 5, Ohio, Pine, Richland, Ross, Shaler, Springdale and West Deer and the Boroughs of Aspinwall, Avalon Ward 3 (Division 1), Bell Acres, Ben Avon, Ben Avon Heights, Brackenridge, Bradford Woods, Cheswick, Edgeworth, Emsworth, Etna Ward 3, Fox Chapel, Franklin Park, Glenfield, Haysville, Leetsdale, Oakmont, Osborne, Plum, Sewickley, Sewickley Heights, Sewickley Hills, Springdale and West View; part of Beaver County consisting of the Cities of Aliquippa and Beaver Falls and the Townships of Brighton, Center, Chippewa, Darlington, Daugherty, Franklin, Greene, Hanover District West, Harmony, Hopewell, Independence, Marion, New Sewickley, North Sewickley, Patterson, Potter, Pulaski, Raccoon, Rochester, South Beaver, Vanport and White and the Boroughs of Ambridge, Baden, Beaver, Big Beaver, Bridgewater, Conway, Darlington, East Rochester, Eastvale, Economy, Fallston, Freedom, Georgetown, Glasgow, Homewood, Hookstown, Industry, Koppel, Midland, Monaca, New Brighton, New Galilee, Ohioville, Patterson Heights, Rochester, Shippingport, South Heights and West Mayfield; part of Butler County consisting of the Townships of Adams, Buffalo, Clinton, Cranberry, Jackson, Lancaster and Middlesex and the Boroughs of Callery, Harmony, Mars, Seven Fields, Valencia and Zelienople; all of Lawrence County; part of Mercer County consisting of the Cities of Farrell and Hermitage District Sw (Divisions 2 and 3) and the Township of Shenango and the Boroughs of West Middlesex and Wheatland; and part of Westmoreland County consisting of the Boroughs of Delmont, Export and Murrysville.

(5) The Fifth District is composed of all of Cameron County; all of Centre County; all of Clarion County; part

of Clearfield County consisting of the City of Dubois and the Townships of Beccaria Precinct 2, Bell, Bigler, Bloom, Boggs (all blocks except 4060 and 4061 of tract 331000), Bradford, Brady, Cooper, Covington, Decatur, Ferguson, Girard, Goshen, Graham, Greenwood, Huston, Karthaus, Lawrence, Morris, Penn, Pike, Pine, Sandy, Union and Woodward and the Boroughs of Brisbin, Chester Hill, Clearfield, Curwensville, Glen Hope, Grampian, Houtzdale, Lumber City, Mahaffey, Osceola Mills, Troutville and Wallaceton; all of Clinton County; part of Crawford County consisting of the City of Titusville and the Townships of Oil Creek and Rome and the Borough of Hydetown; all of Elk County; all of Forest County; all of Jefferson County; part of Juniata County consisting of the Township of Fayette; part of Lycoming County consisting of the Townships of Anthony, Armstrong, Bastress, Brown, Clinton, Cummings, Fairfield, Jackson, Limestone, McHenry, McNett, Mifflin, Nippenose, Old Lycoming, Piatt, Pine, Porter, Susquehanna, Washington, Watson and Woodward and the Boroughs of Duboistown, Jersey Shore, Montgomery, Montoursville, Salladasburg and South Williamsport; all of McKean County; part of Mifflin County consisting of the Townships of Armagh, Decatur, Derry and Granville and the Boroughs of Burnham, Juniata Terrace and Lewistown; all of Potter County; part of Tioga County consisting of the Townships of Bloss, Brookfield, Charleston, Chatham, Clymer, Covington, Deerfield, Delmar, Duncan, Elk, Farmington, Gaines, Hamilton, Jackson, Lawrence, Liberty, Middlebury, Morris, Nelson, Osceola, Putnam, Richmond, Rutland, Shippen, Sullivan, Tioga, Union and Westfield and the Boroughs of Blossburg, Elkland, Knoxville, Lawrenceville, Liberty, Mansfield, Roseville, Tioga, Wellsboro and Westfield; part of Venango County consisting of the Cities of Franklin and Oil City and the Townships of Allegheny, Canal, Cherrytree, Cornplanter, Cranberry, Frenchcreek, Jackson, Mineral, Oakland, Oil Creek, Pinegrove, Plum, President, Sandycreek and

Victory and the Boroughs of Cooperstown, Pleasantville, Polk, Rouseville, Sugarcreek and Utica; and part of Warren County consisting of the Townships of Cherry Grove, Conewango, Deerfield, Elk, Limestone, Mead, Pittsfield, Pleasant, Sheffield, Southwest and Watson and the Boroughs of Clarendon and Tidioute.

(6) The Sixth District is composed of part of Berks County consisting of the City of Reading Wards 1, 3 (Division 2), 9 (Division 5), 13 (Divisions 4 and 5), 14 (Divisions 1, 5 and 6), 16, 17, 18 and 19 (Division 1) and the Townships of Amity, Brecknock, Caernarvon, Colebrookdale, Cumru, District, Douglass, Earl District 2, Exeter, Hereford District 1, Longswamp, Lower Alsace, Maxatawny, Muhlenberg Districts 1 and 4, Robeson, South Heidelberg Precinct 2, Spring Districts 1, 2, 3, 4, 5, 6 and 7, Union and Washington and the Boroughs of Adamstown, Bally, Bechtelsville, Birdsboro, Boyertown, Kenhorst, Kutztown, Mohnton, Mount Penn, New Morgan, Shillington, Sinking Spring, St. Lawrence, Topton, West Lawn, West Reading, Wyomissing and Wyomissing Hills; part of Chester County consisting of the City of Coatesville and the Townships of Caln, Charlestown, East Bradford Districts North and South (Division 2), East Brandywine, East Caln, East Coventry, East Nantmeal, East Pikeland, East Vincent, East Whiteland, Honey Brook, North Coventry, Pocopson, Sadsbury, Schuylkill, South Coventry, Tredyffrin, Upper Uwchlan, Uwchlan, Valley, Wallace, Warwick, West Bradford, West Brandywine, West Caln, West Nantmeal, West Pikeland, West Sadsbury, West Vincent and West Whiteland and the Boroughs of Atglen, Downingtown, Elverson, Honey Brook, Modena, Phoenixville Wards East (Divisions 2 and 3), Middle, North and West, South Coatesville and Spring City; part of Lehigh County consisting of the Township of Upper Macungie District 3; and part of Montgomery County consisting of the Townships of East Norriton, Limerick, Lower Merion, Perkiomen, Plymouth Districts 1, 3

(Division 2) and 4, Skippack, Whitemarsh District West (Divisions 1 and 2), Whitpain District 8 and Worcester and the Boroughs of Collegeville, Conshohocken District 1, Narberth, Norristown, Pottstown and Trappe.

(7) The Seventh District is composed of part of Chester County consisting of the Townships of East Goshen, Easttown, Thornbury, West Goshen, Westtown and Willistown and the Boroughs of Malvern and Phoenixville Ward East (Division 1); part of Delaware County consisting of the Townships of Aston, Bethel, Chadds Ford, Concord, Darby Wards 3, 4 and 5, Edgmont, Haverford, Lower Chichester, Marple, Middletown, Nether Providence, Newtown, Radnor, Ridley Wards 1 (Divisions 1 and 3), 2, 3, 4, 5, 6, 7, 8 and 9, Springfield, Thornbury, Tinicum Wards 3 and 5, Upper Chichester, Upper Darby and Upper Providence and the Boroughs of Aldan, Brookhaven, Chester Heights, Clifton Heights, Collingdale, East Lansdowne, Folcroft, Glenolden, Lansdowne, Marcus Hook, Media, Millbourne, Morton, Norwood, Parkside, Prospect Park, Ridley Park, Rose Valley, Rutledge, Sharon Hill, Swarthmore, Trainer and Upland; and part of Montgomery County consisting of the Townships of Lower Providence, Upper Merion, Upper Providence and West Norriton and the Boroughs of Bridgeport, Conshohocken Districts 2, 3, 4, 5, 6 and 7, Royersford and West Conshohocken.

(8) The Eighth District is composed of all of Bucks County; part of Montgomery County consisting of the Townships of Abington Wards 5 (Division 2), 8 (Division 1) and 15 (Division 2), Upper Dublin Districts 3 and 5 (Division 2) and Upper Moreland Districts 2 and 3 (Division 2); and part of Philadelphia County consisting of the City of Philadelphia Wards 58 (Divisions 4, 6, 7, 20, 21, 22, 24, 29, 31, 39 and 41) and 66 (Divisions 2, 3, 4, 5, 6, 9, 11, 14, 16, 20, 22, 25, 30, 33, 34, 35, 36, 37, 42, 44, 45 and 46).

(9) The Ninth District is composed of all of Bedford County; all of Blair County; part of Cambria County consisting of the Townships of Allegheny, Chest, Clearfield, Dean, Elder, Gallitzin, Reade, Susquehanna District South and White and the Boroughs of Ashville, Chest Springs, Gallitzin, Hastings, Loretto, Northern Cambria, Patton and Tunnelhill (Cambria County portion); part of Clearfield County consisting of the Townships of Beccaria Precinct 1, Boggs (only blocks 4060 and 4061 of tract 331000), Burnside, Chest, Gulich, Jordan and Knox and the Boroughs of Burnside, Coalport, Irvona, New Washington, Newburg, Ramey and Westover; part of Cumberland County consisting of the Townships of Cooke, Dickinson Precinct North, Hopewell, Lower Frankford, Lower Mifflin, Middlesex Precinct 1, North Middleton, North Newton, Penn, South Newton, Southampton Districts Lower and Upper (Precinct 1), Upper Frankford, Upper Mifflin and West Pennsboro Precinct Upper and the Boroughs of Newburg and Newville; part of Fayette County consisting of the City of Connellsville Wards 4 and 5 and the Townships of Connellsville, Dunbar District 1, Georges Districts 1 and 2, Henry Clay, Nicholson District 1, North Union District 3, South Union District 3, Springfield, Springhill District 1, Stewart and Wharton and the Boroughs of Fairchance, Markleysburg, Ohiopyle, Smithfield and South Connellsville; all of Franklin County; all of Fulton County; all of Huntingdon County; part of Indiana County consisting of the Townships of Armstrong, Banks, Black Lick, Brush Valley, Buffington, Burrell, Canoe, Center, Conemaugh, East Mahoning, East Wheatfield, Grant, Green, Montgomery, North Mahoning, Rayne, South Mahoning, Washington, West Mahoning, West Wheatfield, White Districts 3, 4 and 6 and Young and the Boroughs of Armagh, Blairsville, Cherry Tree, Creekside, Ernest, Glen Campbell, Homer City, Indiana Districts 1 and 4, Marion Center, Plumville, Saltsburg, Shelocta and Smicksburg; part of Juniata County consisting of the

Townships of Beale, Delaware, Fermanagh, Greenwood, Lack, Milford, Monroe, Spruce Hill, Susquehanna, Turbett, Tuscarora and Walker and the Boroughs of Mifflin, Mifflintown, Port Royal and Thompsontown; part of Mifflin County consisting of the Townships of Bratton, Brown, Menno, Oliver, Union and Wayne and the Boroughs of Kistler, McVeytown and Newton Hamilton; part of Perry County consisting of the Townships of Carroll, Greenwood, Howe, Jackson, Liverpool, Northeast Madison, Oliver (only block 6999 of tract 030200), Rye, Saville, Southwest Madison, Toboyne and Tyrone and the Boroughs of Blain, Landisburg, Liverpool, Marysville, Millerstown and Newport District 2; part of Somerset County consisting of the Townships of Addison, Allegheny, Black, Brothersvalley, Elk Lick, Fairhope, Greenville, Larimer, Lower Turkeyfoot, Milford, Northampton, Ogle, Shade, Somerset, Southampton, Stonycreek, Summit and Upper Turkeyfoot and the Boroughs of Addison, Berlin, Callimont, Casselman, Central City, Confluence, Garrett, Indian Lake, Meyersdale, New Baltimore, New Centerville, Rockwood, Salisbury, Shanksville, Somerset, Ursina and Wellersburg; and part of Westmoreland County consisting of the Township of Derry District Torrance.

(10) The Tenth District is composed of all of Bradford County; part of Lackawanna County consisting of the City of Carbondale and the Townships of Abington, Benton, Carbondale, Clifton, Covington, Elmhurst, Fell, Glenburn, Greenfield, Jefferson, La Plume, Madison, Newton, North Abington, Ransom, Roaring Brook, Scott, South Abington, Spring Brook, Thornhurst and West Abington and the Boroughs of Archbald, Clarks Green, Clarks Summit, Dalton, Dickson City Wards 1 (Divisions 2, 3 and 4), 2 and 3, Jermyn, Jessup Wards 1, 2 and 3 (Divisions 2 and 3), Mayfield, Moscow, Olyphant Ward 1 and Vandling; part of Luzerne County consisting of the Townships of Dallas, Exeter, Fairmount, Franklin, Kingston, Lake,

Lehman and Ross and the Boroughs of Dallas, Forty Fort, Harveys Lake, Kingston, Swoyersville Wards 1 and 2, West Wyoming and Wyoming; part of Lycoming County consisting of the City of Williamsport and the Townships of Brady, Cascade, Cogan House, Eldred, Franklin, Gamble, Hepburn, Jordan, Lewis, Loyalsock, Lycoming, McIntyre, Mill Creek, Moreland, Muncy, Muncy Creek, Penn, Plunketts Creek, Shrewsbury, Upper Fairfield and Wolf and the Boroughs of Hughesville, Muncy and Picture Rocks; all of Montour County; all of Northumberland County; all of Pike County; all of Snyder County; all of Sullivan County; all of Susquehanna County; part of Tioga County consisting of the Township of Ward; all of Union County; all of Wayne County; and all of Wyoming County.

(11) The Eleventh District is composed of all of Carbon County; all of Columbia County; part of Lackawanna County consisting of the City of Scranton and the Boroughs of Blakely, Dickson City Ward 1 (Division 1), Dunmore, Jessup Ward 3 (Division 1), Moosic, Old Forge, Olyphant Wards 2, 3 and 4, Taylor and Throop; part of Luzerne County consisting of the Cities of Hazleton, Nanticoke, Pittston and Wilkes-Barre and the Townships of Bear Creek, Black Creek, Buck, Butler, Conyngham, Dennison, Dorrance, Fairview, Foster, Hanover, Hazle, Hollenback, Hunlock, Huntington, Jackson, Jenkins, Nescopeck, Newport, Pittston, Plains, Plymouth, Rice, Salem, Slocum, Sugarloaf, Union, Wilkes- Barre and Wright and the Boroughs of Ashley, Avoca, Bear Creek Village, Conyngham, Courtdale, Dupont, Duryea, Edwardsville, Exeter, Freeland, Hughestown, Jeddo, Laflin, Larksville, Laurel Run, Luzerne, Nescopeck, New Columbus, Nuangola, Penn Lake Park, Plymouth, Pringle, Shickshinny, Sugar Notch, Swoyersville Ward 3, Warrior Run, West Hazleton, West Pittston, White Haven and Yatesville; and all of Monroe County.

(12) The Twelfth District is composed of part of Allegheny County consisting of the Townships of East Deer Ward 2 and Forward District 3 and the Borough of Tarentum; part of Armstrong County consisting of the Townships of Bethel, Burrell, Gilpin, Kiskiminetas, Manor, North Buffalo District Eastern, Parks, Plumcreek, South Bend and South Buffalo District Eastern and the Boroughs of Apollo, Elderton, Ford City, Ford Cliff, Freeport, Kittanning, Leechburg, Manorville and North Apollo; part of Cambria County consisting of the City of Johnstown and the Townships of Adams, Barr, Blacklick, Cambria, Conemaugh, Cresson, Croyle, East Carroll, East Taylor, Jackson, Lower Yoder, Middle Taylor, Munster, Portage, Richland, Stonycreek, Summerhill, Susquehanna District North, Upper Yoder, Washington, West Carroll and West Taylor and the Boroughs of Brownstown, Carrolltown, Cassandra, Cresson, Daisytown, Dale, East Conemaugh, Ebensburg, Ehrenfeld, Ferndale, Franklin, Geistown, Lilly, Lorain, Nanty Glo, Portage, Sankertown, Scalp Level, South Fork, Southmont, Summerhill, Vintondale, Westmont and Wilmore; part of Fayette County consisting of the Cities of Connellsville Wards 1, 2, 3 and 6 and Uniontown and the Townships of Brownsville, Bullskin, Dunbar Districts 2, 3 and 4, Franklin, Georges Districts 3 and 4, German, Jefferson, Lower Tyrone, Luzerne, Menallen, Nicholson Districts 2 and 3, North Union Districts 1, 2, 4 and 5, Perry, Redstone, Saltlick, South Union Districts 1 and 2, Springhill District 2, Upper Tyrone and Washington and the Boroughs of Belle Vernon, Brownsville, Dawson, Dunbar, Everson, Fayette City, Masontown, Newell, Perryopolis, Point Marion and Vanderbilt; all of Greene County; part of Indiana County consisting of the Townships of Cherryhill, Pine and White Districts 1 and 2 and the Boroughs of Clymer and Indiana Districts 2 and 3; part of Somerset County consisting of the Townships of Conemaugh, Jefferson, Jenner, Lincoln, Middlecreek, Paint and Quemahoning and the Boroughs of Benson, Boswell, Hooversville, Jennerstown, Paint,

Seven Springs, Stoystown and Windber; part of Washington County consisting of the Cities of Monongahela and Washington and the Townships of Canton, Carroll Districts 2, 3 and 5, Chartiers Districts 3, 5, 6 and 7, East Bethlehem, Fallowfield Districts 1, 2 and 4, North Bethlehem, North Strabane Districts 2 and 3, Somerset, South Strabane Districts 2, 4 and 5, Union, West Bethlehem and West Pike Run and the Boroughs of Allenport, Beallsville, Bentleyville, California, Canonsburg Wards 2 and 3 (Division 1), Centerville, Charleroi Districts 1, 3 and 4, Coal Center, Cokeburg, Deemston, Donora, Dunlevy, East Washington District 2, Elco, Ellsworth, Finleyville, Houston, Long Branch, Marianna, New Eagle, North Charleroi, Roscoe, Speers, Stockdale, Twilight and West Brownsville; and part of Westmoreland County consisting of the Cities of Arnold, Latrobe, Lower Burrell, Monessen and New Kensington and the Townships of Allegheny, Bell, Derry Districts Alters, Bradenville, Cokeville, Cooperstown, Kingston, Loyalhanna, Millwood, New Derry, Peanut, Saxman, Scalp Level and Simpsons, East Huntingdon District Bessemer, Fairfield, Hempfield Districts Bovard, Hannastown and Luxor, Loyalhanna, Mount Pleasant Districts Bridgeport, Duncan, Heccla, Laurel Run, Mammoth, Spring Garden, United and Westmoreland, Rostraver, Salem Districts Hugus and Mechlings, Sewickley Districts East Herminie, Lowber, Rillton, Sewickley and West Herminie, South Huntingdon Districts Jacobs Creek, Mineral, Port Royal, Wayne, Wyano and Yukon, St. Clair, Unity Districts Crabtree, Dorothy, Lloydsville, Mutual and Pleasant Unity, Upper Burrell and Washington Districts North Washington and Paulton and the Boroughs of Avonmore, Bolivar, Derry, East Vandergrift, Hyde Park, Mount Pleasant, New Alexandria, New Florence, North Belle Vernon, Oklahoma, Scottdale, Seward, Smithton, Vandergrift, West Leechburg and West Newton.

(13) The Thirteenth District is composed of part of

Montgomery County consisting of the Townships of Abington Wards 1, 2, 3, 4, 5 (Division 1), 6, 7, 8 (Division 2), 9, 10, 11, 12, 13, 14 and 15 (Division 1), Hatfield, Horsham, Lower Frederick, Lower Gwynedd, Lower Moreland, Lower Salford, Montgomery, New Hanover, Plymouth Districts 2 and 3 (Division 1), Springfield, Towamencin, Upper Dublin Districts 1, 2, 4, 5 (Division 1), 6 and 7, Upper Frederick, Upper Gwynedd, Upper Hanover District 2, Upper Moreland Districts 1, 3 (Division 1), 4, 5, 6 and 7, Upper Salford, Whitemarsh Districts East, Middle and West (Division 3) and Whitpain Districts 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11 and the Boroughs of Ambler, Bryn Athyn, Green Lane, Hatboro, Hatfield, Jenkintown, Lansdale, North Wales, Rockledge and Schwenksville; and part of Philadelphia County consisting of the City of Philadelphia Wards 25 (Divisions 3 and 8), 35 (Divisions 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 25 and 32), 41, 45 (Divisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24 and 25), 53 (Divisions 17, 20 and 21), 55 (Divisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29), 56, 57, 58 (Divisions 1, 2, 3, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 23, 25, 26, 27, 28, 30, 32, 33, 34, 35, 36, 37, 38, 40, 42, 43 and 44), 62 (Divisions 1, 2, 3, 4, 5, 6, 8, 9, 12, 13, 15, 16, 17, 18, 19, 21, 22, 24, 25 and 26), 63, 64, 65 and 66 (Divisions 1, 7, 8, 10, 12, 13, 15, 17, 18, 19, 21, 23, 24, 26, 27, 28, 29, 31, 32, 38, 39, 40, 41 and 43).

(14) The Fourteenth District is composed of part of Allegheny County consisting of the Cities of Clairton, Duquesne, McKeesport and Pittsburgh and the Townships of Elizabeth Ward 9, Kennedy, Neville Wards 1 and 2, North Versailles Wards 1, 2, 3 (Division 2), 4, 5, 6 and 7, O'Hara Ward 1 (Division 2), Penn Hills Wards 1, 2, 3 (Divisions 2, 3, 4 and 5), 4 (Divisions 1, 2 and 4), 5 (Divisions 2, 3 and 4), 6 (Divisions 1, 2, 3, 4 and 6), 7 (Divisions 1, 2, 3, 4, 6 and 7), 8 and 9 (Divisions 1, 2 and

5), Reserve, Robinson Districts 3 and 5, Stowe and Wilkins Ward 2 (Division 2) and the Boroughs of Avalon Wards 1, 2 and 3 (Divisions 2 and 3), Baldwin Districts 1, 2, 3, 5, 9, 11, 12, 13, 15, 16 and 18, Bellevue, Blawnox, Braddock, Braddock Hills, Chalfant, Coraopolis, Crafton Wards 1, 2 and 3 (Division 1), Dravosburg, East McKeesport, East Pittsburgh, Edgewood, Etna Wards 1 and 2, Forest Hills, Glassport, Homestead, Ingram, Liberty, Lincoln, McKees Rocks, Millvale, Monroeville Wards 1 (Division 1) and 7, Mount Oliver, Munhall, North Braddock, Pitcairn Districts 2 and 3, Port Vue, Rankin, Sharpsburg, Swissvale, Turtle Creek, Verona, Versailles, Wall, West Homestead, West Mifflin, Whitaker, White Oak District 7, Wilkinsburg and Wilmerding.

(15) The Fifteenth District is composed of part of Berks County consisting of the Townships of Albany and Hereford District 2; part of Lehigh County consisting of the Cities of Allentown and Bethlehem (Lehigh County portion) and the Townships of Hanover, Heidelberg, Lower Macungie, Lower Milford, Lowhill, Lynn, North Whitehall, Salisbury, South Whitehall, Upper Macungie Districts 1, 2 and 4, Upper Milford, Upper Saucon, Washington, Weisenberg and Whitehall and the Boroughs of Alburtis, Catasauqua, Coopersburg, Coplay, Emmaus, Fountain Hill, Macungie and Slatington; part of Montgomery County consisting of the Townships of Douglass, Franconia, Lower Pottsgrove, Marlborough, Salford, Upper Hanover Districts 1 and 3, Upper Pottsgrove and West Pottsgrove and the Boroughs of East Greenville, Pennsburg, Red Hill, Souderton and Telford (Montgomery County portion); and all of Northampton County.

(16) The Sixteenth District is composed of part of Berks County consisting of the City of Reading Wards 2, 3 (Division 1), 4, 5, 6, 7, 8, 9 (Division 2), 10, 11, 12, 13 (Divisions 1 and 2), 14 (Division 4), 15 and 19 (Division 2) and the Townships of Bern District 3, Lower Heidelberg,

Muhlenberg District 6, South Heidelberg Precinct 1 and Spring District 8 and the Borough of Wernersville; part of Chester County consisting of the Townships of Birmingham, East Bradford District South (Division 1), East Fallowfield, East Marlborough, East Nottingham, Elk, Franklin, Highland, Kennett, London Britain, London Grove, Londonderry, Lower Oxford, New Garden, New London, Newlin, Penn, Pennsbury, Upper Oxford, West Fallowfield, West Marlborough and West Nottingham and the Boroughs of Avondale, Kennett Square, Oxford, Parkesburg, West Chester and West Grove; and all of Lancaster County.

(17) The Seventeenth District is composed of part of Berks County consisting of the Townships of Alsace, Bern Districts 1 and 2, Bethel, Centre, Earl District 1, Greenwich, Heidelberg, Jefferson, Maidencreek, Marion, Muhlenberg Districts 2, 3, 5, 7 and 8, North Heidelberg, Oley, Ontelaunee, Penn, Perry, Pike, Richmond, Rockland, Ruscombmanor, Tilden, Tulpehocken, Upper Bern, Upper Tulpehocken and Windsor and the Boroughs of Bernville, Centerport, Fleetwood, Hamburg, Laureldale, Leesport, Lenhartsville, Lyons, Robesonia, Shoemakersville, Strausstown and Womelsdorf; all of Dauphin County; all of Lebanon County; part of Perry County consisting of the Townships of Buffalo, Centre, Juniata, Miller, Oliver (all blocks except 6999 of tract 030200), Penn, Spring, Tuscarora, Watts and Wheatfield and the Boroughs of Bloomfield, Duncannon, New Buffalo and Newport District 1; and all of Schuylkill County.

(18) The Eighteenth District is composed of part of Allegheny County consisting of the Townships of Baldwin, Collier, Crescent, Elizabeth Wards 1, 2, 3, 4, 5, 6, 7 and 8, Findlay, Forward Districts 1, 2 and 4, Moon, Mount Lebanon, North Fayette, North Versailles Ward 3 (Division 1), Penn Hills Wards 3 (Divisions 1 and 6), 4 (Divisions 3 and 5), 5 (Divisions 1, 5 and 6), 6 (Division 5), 7 (Division

5) and 9 (Divisions 3 and 4), Robinson Districts 1, 2, 4, 6, 7, 8 and 9, Scott, South Fayette, South Park, South Versailles, Upper St. Clair and Wilkins Wards 1 and 2 (Division 1) and the Boroughs of Baldwin Districts 4, 6, 7, 8, 10, 14 and 17, Bethel Park, Brentwood, Bridgeville, Carnegie, Castle Shannon, Churchill, Crafton Ward 3 (Division 2), Dormont, Elizabeth, Green Tree, Heidelberg, Jefferson Hills, McDonald (Allegheny County portion), Monroeville Wards 1 (Divisions 2, 3 and 4), 2, 3, 4, 5 and 6, Oakdale, Pennsbury Village, Pitcairn District 1, Pleasant Hills, Rosslyn Farms, Thornburg, Trafford (Allegheny County portion), West Elizabeth, White Oak Districts 1, 2, 3, 4, 5 and 6 and Whitehall; part of Beaver County consisting of the Township of Hanover District East and the Borough of Frankfort Springs; part of Washington County consisting of the Townships of Amwell, Blaine, Buffalo, Carroll Districts 1 and 4, Cecil, Chartiers Districts 1, 2 and 4, Cross Creek, Donegal, East Finley, Fallowfield District 3, Hanover, Hopewell, Independence, Jefferson, Morris, Mount Pleasant, North Franklin, North Strabane Districts 1, 4, 5 and 6, Nottingham, Peters, Robinson, Smith, South Franklin, South Strabane Districts 1 and 3 and West Finley and the Boroughs of Burgettstown, Canonsburg Wards 1 and 3 (Division 3), Charleroi Districts 2 and 6, Claysville, East Washington District 1, Green Hills, McDonald, Midway, West Alexander and West Middletown; and part of Westmoreland County consisting of the Cities of Greensburg and Jeannette and the Townships of Cook, Donegal, East Huntingdon Districts Ruffsdale, Stoners, Strohms and Whites, Hempfield Districts Alwine, Carbon, East Adamsburg, Eastview, Fort Allen, Foxhill, Gayville, Grapeville, Haydenville, High Park, Lincoln Heights, Lincoln Heights West, Maplewood, Middletown, New Stanton, North Carbon, Sibel, Todd, University, Valley, Weavers Old Stand, Wegley, Wendel Herm, West Hempfield and West Point, Ligonier, Mount Pleasant Districts Pleasant Valley and Ridgeview, North

Huntingdon, Penn, Salem Districts Five Points, New Salem, Slickville, Steeles and Trees Mills, Sewickley District Whyel, South Huntingdon Districts Hixon and South Huntingdon, Unity Districts Baggaley, Beatty, Dennison, Gravel Hill, Kuhns, Marguerite, Roble and Whitney and Washington Districts Beamers and Oakland X Roads and the Boroughs of Adamsburg, Arona, Donegal, Hunker, Irwin, Laurel Mountain, Ligonier, Madison, Manor, New Stanton, North Irwin, Penn, South Greensburg, Southwest Greensburg, Sutersville, Trafford (Westmoreland County portion), Youngstown and Youngwood.

(19) The Nineteenth District is composed of all of Adams County; part of Cumberland County consisting of the Townships of Dickinson Precinct South, East Pennsboro, Hampden, Lower Allen, Middlesex Precinct 2, Monroe, Shippensburg, Silver Spring, South Middleton, Southampton District Upper (Precinct 2), Upper Allen and West Pennsboro Precinct Lower and the Boroughs of Camp Hill, Carlisle, Lemoyne, Mechanicsburg, Mount Holly Springs, New Cumberland, Shippensburg (Cumberland County portion), Shiremanstown and Wormleysburg; and all of York County

* * *

§ 3595.501 Duties of secretary

The secretary has the following duties:

(1) By 12 noon on April 25, 2002, the secretary shall make a determination as to whether an injunction prohibiting the Commonwealth from conducting the 2002 election for Representatives in Congress in accordance with the redistricting plan contained in Act 1 of 2002 [25 P.S. §3595.1, et seq.] remains in effect.

(2) On April 25, 2002, if the secretary determines that an

injunction prohibiting the Commonwealth from conducting the 2002 election for Representatives in Congress in accordance with the redistricting plan contained in Act 1 of 2002 does not remain in effect, the secretary shall transmit notice of that determination to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

(3) On April 25, 2002, if the secretary determines that an injunction prohibiting the Commonwealth from conducting the 2002 election for Representatives in Congress in accordance with the redistricting plan contained in Act 1 of 2002 remains in effect, the secretary shall transmit notice of that determination to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

(4) Publish on the department's World Wide Web site a map of this Commonwealth showing all congressional districts established.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
PENNSYLVANIA

RICHARD VIETH,	**: Civil No. 1:CV-01-2439**
NORMA JEAN VIETH,	**:**
and SUSAN FUREY,	**:**
	:
Plaintiffs	**: NYGAARD, Circuit Judge**
	:
v.	**: YOHN, District Judge**
	:
COMMONWEALTH OF	**: RAMBO, District Judge**
PENNSYLVANIA, *et al.*,	**:**
	:
Defendants	**:**

ORDER

IT IS HEREBY ORDERED THAT Defendants' renewed motion for stay pending appeal of order granting declaratory judgment and injunction is **GRANTED**, as follows:

(1) Upon consideration of Defendants' renewed motion for a stay, the stay is **GRANTED**. Defendants will be allowed to conduct only the 2002 Congressional elections using Act 1;

(2) A hearing is scheduled for the purpose of determining whether Act 34 arguably remedies the constitutional violation found by this court in its order of April 8, 2002. Said hearing shall occur at **9:30 a.m. on**

Wednesday, May 8, 2002, in Courtroom No. 2, Ninth Floor, Federal Building, Third and Walnut Streets, Harrisburg, Pennsylvania.

/s/ Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge
on behalf of the panel

Dated: April 23, 2002

Supreme Court, U.S.
FILED
JUL 16 2002
OFFICE OF THE CLERK

(4) (3)

Nos. 01-1817 and 01-1823

IN THE

Supreme Court of the United States

ROBERT C. JUBELIRER, *et al.*,
Appellants,

v.

RICHARD VIETH, *et al.*,
Appellees.

GOVERNOR MARK S. SCHWEIKER, *et al.*,
Appellants,

v.

RICHARD VIETH, *et al.*,
Appellees.

On Appeal from the United States District Court for the Middle District of Pennsylvania

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APPELLEES' MOTION TO AFFIRM

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MISCELLANEOUS

Gregory M. Harvey, *Redistricting Plan Draw the Line Between Equal and Fair*, Legal Intelligencer, May 20, 2002 1

http://www.NCSL.org/programs/legman/redistrict/redistpopdev.htm 1

Appellees – plaintiffs in the district court – hereby respond to the jurisdictional statements filed by Robert C. Jubelirer *et al.* in No. 01-1817, and by Governor Mark S. Schweiker *et al.* in No. 01-1823 (hereinafter jointly referred to as "appellants" or "defendants"). As we show, the district court's ruling was a plainly correct application of the law established by this Court to the facts established at trial, and it should be summarily affirmed.

STATEMENT

Act 1 – the law at issue here – was a congressional redistricting plan enacted by the Pennsylvania General Assembly in January 2002. As discussed in appellees' own jurisdictional statement in No. 01-1873, where appellees are appealing the dismissal of their claims of political gerrymandering by the same three-judge district court, Act 1 reflected very little concern about adherence to traditional and legitimate redistricting criteria such as compactness, respect for political subdivisions and communities of interest, minimizing change from the prior districts, avoiding contests between incumbents, and the like. These criteria were largely abandoned wherever necessary to produce a map aptly characterized as "the most partisan congressional gerrymander of this young century, and among the worst in the last several decades of the earlier millennium." Gregory M. Harvey, *Redistricting Plan Draws the Line Between Equal and Fair*, Legal Intelligencer, May 20, 2002, at 6.

Act I, unlike many congressional district maps enacted by state legislatures in the round of redistricting following the 2000 census,[1] also did not achieve perfect population equality among the districts – *i.e.*, districts that all had the same

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[1] *See* http://www.ncsl.org/programs/legman/redistrict/redistpopdev.htm (table on web site of the National Conference of State Legislatures).

population or differed by one person where mathematically necessary. The largest and smallest districts in Act 1 differed by 19 persons.

Plaintiffs brought suit in January 2002, alleging that Act 1 was unconstitutional both because it contained an unjustified departure from population equality and because the partisan bias in the map – likely to produce a 14-5 or 13-6 Republican advantage in the Pennsylvania delegation even if Republican candidates received less than half the votes for Congress – was so extreme that the map constituted an illegal "political gerrymander." Jubelirer J.S. App. 25a-43a.

Defendants moved to dismiss both claims. The three-judge court (Circuit Judge Nygaard and District Judges Rambo and Yohn) agreed to dismiss the partisan gerrymandering claim, concluding that although plaintiffs had adequately alleged the requisite partisan intent and a sufficient level of partisan bias in the map, they were required under *Davis v. Bandemer*, 478 U.S. 109 (1986), to allege in addition that Democrats would be unable even to participate in the political process – *i.e.*, prevented from organizing, fielding candidates, and campaigning for office. Schweiker J.S. App. 40a-47a.[2]

The court, however, refused to dismiss the one-person, one-vote claim. It noted that plaintiffs had alleged that the districts in Act 1 did not achieve perfect population equality. *Id.* 37a. It rejected defendants' argument that the population

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[2]Appellees' basic argument as appellants in No. 01-1873 is that this additional requirement – effectively demanding a showing that the State is engaging in grotesque violations of First Amendment rights independent of the partisan bias in its districting map – makes no sense, draws no support from *Davis v. Bandemer*, and completely undercuts this Court's ruling there that partisan gerrymandering claims are justiciable.

deviation alleged, 19 persons, is too small to raise a constitutional concern. *Id.* In so doing, it relied on this Court's definitive analysis of constitutional one-person, one-vote requirements in *Karcher v. Daggett*, 462 U.S. 725 (1983). *Id.* ("'[T]here are no *de minimis* variations, which could practically be avoided, but which nonetheless meet the standard of Art. I, § 2 without justification.'") (quoting *Karcher*, 462 U.S. at 734). The district court also rejected the argument that plaintiffs were required at the pleading stage to allege that an alternative plan would have eliminated the population deviations. *Id.* 38a.

The one-person, one-vote claim accordingly went to trial on an expedited basis in March 2002. At trial, it was undisputed that the districts in Act 1 had a 19-person deviation. Jubelirer J.S. App. 7a. Plaintiffs introduced an example of a map that achieved perfect population equality – thus establishing that nothing prevented the State from doing so if it so chose. *Id.* That map also achieved perfect population equality without splitting a single voting precinct anywhere in the State, *id.*, which has traditionally been a goal in Pennsylvania. The map drawer, Robert Priest, described a process by which it is always possible both to minimize population deviations and to avoid precinct splits. *Id.* 12a. As he said, once one has a rough draft of a map, with districts built using whole precincts that are near population equality, there are literally thousands of potential "precinct swaps" that can be made across the line dividing any two of the districts. It is a relatively simple matter for a computer to analyze the options and identify those that produce perfect population for both districts. *See* Appellees' App. 2a-3a.[3]

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[3]In this Motion, "Appellees' App. _a" refers to pages of the Appendix attached hereto.

Plaintiffs also attempted to anticipate defendants' argument by introducing expert testimony addressing the *real* basis for Act 1's districting choices. That testimony established that the primary consideration animating the drawing of the lines in Act 1 was not any of the neutral criteria listed in *Karcher* as potential justifications for a population deviation, but instead was partisan advantage. *See id.* 4a-6a; *see also* Jubelirer J.S. App. 13a..

Defendants then introduced evidence attempting to offer a neutral justification for their map. Their claim was that the map drawers had stopped short of achieving perfect population equality in an effort to minimize precinct splits. The witness they called to support that argument was a map drawer, Dr. John Memmi, who disclaimed any knowledge of the actual goals that were being pursued by the senior Republican staffers who directed his map drawing. *See* Appellees' App. 7a-8a, 11a. He agreed with plaintiffs' map drawer that there was nothing in principle that would prevent a map from achieving both perfect population equality and zero precinct splits, as long as the map drawer had sufficient flexibility to make the precinct swaps required. *See id.* 11a-12a.

Memmi then described the actual process that led to Act 1. He said that the map existed in rough form and he made some efforts to achieve population equality without using precinct splits, by moving around whole precincts as described by Mr. Priest, producing perfect populations in three districts. *See* Jubelirer J.S. App. 9a, 11a-12a. At that point, however, he was instructed to avoid any further shifts of whole precincts across district lines and to reduce population deviations thereafter only by shifting "census blocks." *Id.* 12a. That methodology necessarily involves creation of split precincts, since census blocks are components of precincts. *Id.* Then, when the plan's

total population deviation had been reduced to 19 persons, he was instructed to stop making any changes. *Id.* 9a.

In sum, the evidence established that defendants (1) had available a methodology for achieving perfect population equality while avoiding precinct splits, (2) knew about and used that methodology during one phase of the map-drawing process, but (3) stopped doing so when the political operatives in charge made the judgment that they did not want to make the additional changes in the district lines that occur when whole precincts are "swapped." No evidence was offered concerning the reasons why the political operatives supervising Dr. Memmi made that last decision.

Based on this record, the district court concluded that defendants had failed to justify the population deviations in Act 1 on the basis of their desire to avoid precinct splits.[4] It recognized that the sole cause of precinct splits in the map was the decision of Memmi's "superiors in the Republican caucus" to instruct him "only to manipulate census blocks and not precincts." *Id.* 12a. Because the evidence showed that defendants could have eliminated any population deviation and eliminated all precinct splits – if only they were willing to make the modest changes in their preferred map entailed by shifting a handful of whole precincts – the proffered justification for the 19-person deviation was a "mere pretext." *Id.* 11a. The court commented that the

> logical inconsistency [in defendants' position] is so deep that it causes us to pause and

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[4]Judge Yohn dissented, concluding that defendants "just barely" met their burden of justifying the population deviations in Act 1. Jubelirer J.S. App. 18a.

> consider the sincerity of such proffer. If Defendants truly wanted to avoid splitting precincts, they would have done so by enacting a zero deviation map that did not split *any* precincts.

Id. 12a.

The court then addressed the issue of remedy. It rejected plaintiffs' request that it select a remedial map of its own. To the contrary, the court chose to defer to the prerogatives of the General Assembly and gave defendants three weeks to come back to court with a constitutionally sound districting plan enacted by the General Assembly. *Id.* at 15a.[5]

REASONS TO AFFIRM

Appellants offer no persuasive reason to overturn the decision of the district court holding Act 1 unconstitutional. Although the population deviations in this case were relatively small, *Karcher* makes clear that there are no population deviations in congressional district maps that are so small that they can be considered "*de minimis*" and thus pass constitutional muster without any justification. Thus, here, at least after plaintiffs had proffered an alternative map that eliminated all deviations, the court was correct to require defendants to offer some justification – however minimal – of the 19-person deviation in Act 1.

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[5]The General Assembly did then pass a new map – Act 34 – that defendants contended solved the constitutional problem. Plaintiffs disagreed, and that issue is still being litigated in the district court. Resolution of the remedial dispute became less urgent when the district court chose to stay its initial ruling, thus allowing Act 1 to be used in this year's elections. Schweiker J.S. App. 87a-88a.

What it received was not a justification but a "mere pretext" that caused the court to doubt the "sincerity" of defendants' proffer. The evidence simply did not support the claim that the population deviations resulted from a desire to minimize precinct splits. To the contrary, the evidence was crystal clear that defendants (1) could have avoided all precinct splits while achieving perfect population equality, but (2) *chose* instead to *create* precinct splits by lowering population deviations through shifts of individual census blocks, and then (3) further *chose*, when the deviations had been lowered to19, to stop their efforts to reduce the deviations. The only possible conclusion was that defendants' map drawers had been unwilling to make the modest additional changes in their carefully calibrated map that would have been required to achieve population equality while keeping all precincts intact. But defendants offered *no* justification to support that reticence – presumably because they would have been required to admit that the real concern was upsetting a fine-tuned effort to guarantee election of 13 or 14 Republican members of Congress, even if Republican candidates (as usual) received less than half the statewide vote.

Especially given the ease with which modern computers allow States to achieve perfect population equality in congressional districts, there is no reason to consider overruling the *Karcher* principle that all avoidable population deviations require some justification. Nor is there any reason to overturn the district court's factual finding that the justification proffered here was a "mere pretext." No matter how small the deviation at issue, the requirement of some justification would be meaningless if it could be satisfied by mere articulation of a neutral goal like avoiding split precincts – in the face of evidence showing that the defendants could have achieved that goal while achieving population equality, but deliberately chose not to do so.

I. THE DISTRICT COURT CORRECTLY HELD THAT DEFENDANTS WERE REQUIRED TO SHOW A JUSTIFICATION FOR THE POPULATION DEVIATIONS AMONG DISTRICTS.

In *Karcher v. Daggett*, 462 U.S. 725 (1983), the Court articulated without ambiguity the criteria for judging population deviations in congressional redistricting plans. In the first place, the Court rejected the notion of a *de minimis* population variation that warranted no further scrutiny. *Id.* at 734. Any deviation, therefore, must be subjected to the two-part test that the *Karcher* Court outlined. First, challengers to a plan must show that the "population differences were not the result of a good faith effort to achieve equality." *Id.* at 731. Second, once the first part of the test is satisfied, the burden of proof shifts to the defendants, who must prove that the population variations are "necessary to achieve some legitimate goal." *Id.* The district court faithfully applied the *Karcher* test.

A. This Court in *Karcher* Squarely Rejected Appellants' Argument for a *De Minimis* Exception to the Population Equality Mandated By the One-Person, One-Vote Standard.

In considering the population deviations among the congressional districts created by Pennsylvania's Act 1, the district court engaged in a straightforward application of this Court's one-person, one-vote jurisprudence. Appellants recognize, as they must, that the Court in *Karcher* reinforced its longstanding commitment to the principle of equal population in congressional districts, *see Wesberry v. Sanders,* 376 U.S. 1, 7-8 (1964), "reaffirm[ing] that there are no *de minimis* population variations, which could practically be avoided, but which nonetheless meet the standard of Art. I, § 2, without

justification." *Karcher*, 462 U.S. at 734. Appellants now ask this Court to overrule *Karcher* and create a *de minimis* exception to the one-person, one-vote rule that would allow the creation of unequal congressional districts without *any* justification whatsoever. There is no reason to revisit the long-standing, unambiguous *Karcher* standard.

Appellants' arguments here are nothing new, and were squarely rejected in *Karcher*. The Court in *Karcher* dismissed the notion, pressed by appellants here, that "small deviations [are] the functional equivalent of equality." *Id.* at 735. Accordingly, the Court rejected an appeal to purported statistical imprecision and declined to draw a "*de minimis* line that gives [an] illusion of rationality and predictability." *Id.* As *Karcher* made abundantly clear, there are compelling reasons why "absolute population equality [is] the paramount objective of reapportionment." *Id.* at 732. For example, only absolute equality can ensure that the impact of any statistical imprecision is kept to a minimum. *See id.* at 736-38 (explaining why the census undercount rate cannot be an acceptable margin of error); *id.* at 737 n.8 (explaining how the census margin of error could exacerbate actual deviations because the census undercount will not be uniformly spread across districts). *Karcher* unequivocally reaffirmed that, "[a]s between two standards – equality or something less than equality – only the former reflects the aspirations of Art. I, § 2." *Id.* at 732.[6]

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[6]The Court in *Karcher* offered several additional reasons to reject a *de minimis* exception: "Adopting any standard other than population equality, using the best census data available, would subtly erode the Constitution's ideal of equal representation. If state legislators knew that a certain *de minimis* level of population differences were acceptable, they would doubtless strive to achieve that level rather than equality. Furthermore, choosing a different standard would import a high degree of arbitrariness

In the nineteen years since *Karcher*, there have been no legal or factual developments that cast any doubt on the basic constitutional requirement of population equality in congressional redistricting. To the contrary, technological advancements since *Karcher* have made it increasingly simple to draw districting maps with absolute precision, making population deviations even easier to eliminate than at the time of *Karcher*. By 1983, this Court concluded that absolute population equality was a technologically achievable goal:

> If anything, this [one-person, one-vote] standard should cause less difficulty now for state legislatures than it did when we adopted it in *Wesberry*. The rapid advances in computer technology and education during the last two decades make it relatively simple to draw contiguous districts of equal population and at the same time to further whatever secondary goals the State has. . . . [T]o abandon unnecessarily a clear and oft-confirmed constitutional interpretation would impair our authority in other cases, would implicitly open the door to a plethora of requests that we reexamine other rules that some may consider burdensome, and would prejudice those who have relied upon the rule of law in seeking an equipopulous congressional apportionment.

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into the process of reviewing apportionment plans. In this case, appellants argue that a maximum deviation of approximately 0.7% should be considered *de minimis*. If we accept that argument, how are we to regard deviations of 0.8%, 0.95%, 1%, or 1.1%?" *Karcher*, 462 U.S. at 731-32 (citations omitted).

Karcher, 462 U.S. at 733-34 (citations omitted). As the trial evidence in this case confirms, *see infra* Part I.B., zero population deviation is an even simpler task in today's redistricting world.

Karcher's bright-line rule rejecting *de minimis* population deviations hardly creates the potential for "disrepute" feared by appellants. *See* Jubelirer J.S. at 12. As made clear both in *Karcher* and the district court's application of the *Karcher* standard, the requirement of absolute population equality is merely the first step in the one-person, one-vote analysis. The existence of avoidable population deviations simply triggers the State's obligation to justify those deviations with legitimate redistricting criteria. And, as recognized by the district court, any legitimate justifications need only be proportional to the deviations at issue. *See* Jubelirer J.S. App. 11a (citing *Karcher*, 462 U.S. at 741). Thus, with deviations as small as those in Act 1, congressional redistricting likely will be unconstitutional only where, as here, *see infra* Part II, the State offers absolutely no legitimate justification for the population inequalities.

B. The District Court Properly Concluded that Act 1 Was Not the Result of a Good-Faith Effort to Achieve Absolute Equality.

The district court's application of the first prong of the *Karcher* test was entirely proper and wholly unremarkable. Under *Karcher*, a reviewing court "must consider whether the population differences among districts could have been reduced or eliminated altogether by a good-faith effort to draw districts of equal population." *Karcher*, 462 U.S. at 730. Plaintiffs plainly met their burden under the first prong of *Karcher*.

As the district court found, the evidence at trial

"conclusively demonstrates that [Act 1's] population deviation was avoidable." Jubelirer J.S. App. 7a. Both defendants and plaintiffs submitted at trial alternate maps that achieved zero population deviation. In addition, "[w]itnesses presented by both parties testified that it would have been relatively easy to take *any* plan or map and reach a point of zero population deviation." *Id.* (emphasis added).

Indeed, defendants' sole witness familiar with the map-drawing process conceded that no good-faith effort was made to achieve population equality in Act 1. As noted by the district court, "once he reached the point of a 19-person deviation, he was told to stop manipulating the map." *See* Jubelirer J.S. App. 9a. The undisputed evidence makes clear that defendants were working toward a standard that was something less than the absolute equality mandated by Article I, Section 2. Act 1, then, was not the result of a good-faith effort to achieve absolute equality.

C. The District Court Properly Rejected Defendants' Claim that the Absence of Alternative Maps Before the Legislature Evinced Good Faith.

Appellants' jurisdictional statements offer nothing to undercut the district court's conclusion that the first prong of the *Karcher* test is satisfied here.[7] Unable to point to positive evidence of a good-faith effort, they resort to questioning the district court's consideration of the alternative maps that demonstrate the possibility of achieving zero deviation.

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[7]Even Judge Yohn in dissent, on whom appellants otherwise rely, agreed that "the plaintiffs . . . met the first prong of the *Karcher* test." Jubelirer J.S. App. 18a.

Appellants contend at length that only maps actually before the legislature can be introduced to demonstrate the feasibility of zero deviation and suggest that the absence of any such alternative maps in the legislative process should be accepted as evidence of a good-faith effort. This line of argument, however, is directly contradicted by *Karcher*. Indeed, even though in *Karcher* alternative plans had been considered by the legislature, the Court made clear that these need not be the foundation of a finding that greater parity of population among districts was possible, explaining that "it was unnecessary for the district court to rest its finding on the existence of alternative plans." *Karcher,* 462 U.S. at 739.

As the district court recognized, the *Karcher* standard mandates -- in the absence of some legitimate justification -- the adoption of the most equally apportioned plan *possible*, not the most equally apportioned plan that has so far come to light:

> Although in *Karcher*, the legislature had before it other plans with less deviation, the Court never endorsed such a requirement. . . . If we were to adopt the limited analysis suggested by the Defendants, we would be adopting a view that would isolate grossly disproportionate plans from constitutional scrutiny on the sole basis that such plans constitute the plan with the least deviations *available*. *Karcher* is wrought with references indicating that the least deviation *possible* is that which should govern the analysis.

Jubelirer J.S. App. 7a-8a n.3.

Appellants also argue that any alternative map

demonstrating that population deviation was avoidable must, even at the first stage of a *Karcher* inquiry, somehow replicate the contours and details of Act 1. *See, e.g.*, Jubelirer J.S. at 9, 14. Again, however, this argument is flatly foreclosed by *Karcher*. Certainly, legitimate political considerations theoretically might require some deviation, but *Karcher* made clear that these considerations are to be addressed at the second stage of the inquiry. As this Court explained, "the claim that political considerations require population differences among congressional districts belongs more properly to the second level of judicial inquiry in these cases, in which the State bears the burden of justifying the differences with particularity." *Karcher*, 462 U.S. at 739.

II. DEFENDANTS OFFERED NO LEGITIMATE, CONSTITUTIONALLY PERMISSIBLE JUSTIFICATION FOR THE POPULATION DEVIATIONS IN ACT 1.

Karcher makes clear that in the absence of a "good faith effort to achieve equality, the State must bear the burden of proving that each significant variance between districts was necessary to achieve some legitimate goal." *Karcher*, 462 U.S. at 731. As found by the district court and discussed below, the State failed to meet its burden under this second prong of the *Karcher* test. At trial, defendants made only one attempt to tie the particular deviations in Act 1 to some legitimate redistricting criterion. Having reviewed the relevant trial testimony, the district court found as a fact that the proffered justification was pretextual. This Court should leave that determination undisturbed and summarily affirm the district court's decision.

A. There Is No Reason to Disturb the District Court's Factual Determination that Defendants' Sole Proffered Justification for the Deviations in Act 1 Was Pretextual.

Required to justify Act 1's departure from the one-person, one-vote standard, defendants offered only one putative rationale at trial: a desire to avoid splitting precincts. But while such a rationale is, in the abstract, surely legitimate, it cannot justify population deviations if the purported justification is, as the district court concluded, "a mere pretext." *See* Jubelirer J.S. App. 11a.

Even if defendants' burden under the second prong of the *Karcher* test is not particularly heavy (given the small deviation), the second prong must require more than a simple incantation of some well-recognized redistricting concerns. Supposed justifications must be supported by the evidentiary record. Considering the evidence before it, the district court concluded that the sole proffered justification was without factual support. Act 1 remains, then, an unjustified violation of the one-person, one-vote standard.

There is no reason for this Court to disturb the factual findings of the district court. The Court has always been "mindful that the District Court's findings of fact must be upheld unless they are clearly erroneous." *City of Rome v. United States*, 446 U.S. 156, 183 (1980); *see also, e.g., Johnson v. De Grandy*, 512 U.S. 997, 1022 (1994); *Thornburg v. Gingles*, 478 U.S. 30, 78-79 (1986). In this case, each of the district court's findings is amply supported by the record, included the uncontradicted testimony of defendants' own witness. All trial testimony confirmed the ease of creating a zero-deviation map with no precinct splits. *See* Jubelirer J.S.

App. 11a-12a. Indeed, the State's map-drawer began a process of limiting both deviations *and* precinct splits, but was soon instructed by his superiors to discontinue that process in favor of one that would *increase* precinct splits. *Id.* 12a. The clear "logical inconsistency," *id.*, in appellants' position is compounded by the fact that "none of the congressional districts that have split precincts [has] an ideal population." *Id.*

The district court's finding of pretext was further bolstered by the wealth of trial evidence demonstrating the State's true motivation in designing Act 1: the maximization of Republican partisan advantage at the expense of all legitimate redistricting principles. As the district court found, "of the maps presented at trial, Act 1 is that which least comports with the neutral legislative policies that the *Karcher* Court stated would justify a Congressional redistricting plan with some deviations." *Id.* 13a.[8] For example, Act 1 did not create compact districts, did not minimize county and municipal splits, did not minimize precinct splits, and did not minimize the contests between incumbents (in particular, Democratic incumbents). *Id.* These findings provide additional support for the notion that partisan

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[8]The criteria for justifying a departure from absolute equality are outlined in *Karcher*:

> Any number of consistently applied legislative policies might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent representatives. As long as the criteria are nondiscriminatory, these are all legitimate objectives that on a proper showing could justify minor population deviations.

462 U.S. at 740.

advantage – and not a desire to minimize precinct splits – was the true motivation behind Act 1.

Appellants now attempt to argue that the mere recital of any supposed rationale should be accepted as legitimate and sufficient without any further scrutiny whatsoever. They further contend that the district court's unwillingness simply to accept the proffered justification without regard to its credibility makes the second prong of the *Karcher* test impossibly to satisfy.

These arguments are unpersuasive for two reasons. First, as litigation in the lower courts makes clear, congressional maps with population deviations routinely survive one-person, one-vote challenges upon a credible showing of legitimate justification. *See, e.g., Graham v. Thornburgh*, No. 02-4087-JAR, 2002 WL 1453796, at *7-*10 (D. Kan. July 3, 2002) (upholding a plan with small population deviations that were made necessary by State's interests in maintaining minority voting strength, balancing the claims of various communities of interest, and prioritizing the contiguity and compactness of districts); *Stone v. Hechler*, 782 F. Supp. 1116, 1127 (N.D. W. Va. 1992) (holding that "preserving the cores of prior districts" and "compactness" were legitimate justifications for small population deviations); *Turner v. State*, 784 F. Supp. 585, 588 (E.D. Ark. 1991) (holding that "to the extent possible, [leaving] people and counties within the same congressional district" was a legitimate justification); *Anne Arundel Co. Republican Cent. Comm. v. State Admin. Bd. of Election Laws,* 781 F. Supp. 394, 397 (D. Md. 1991) (upholding congressional map and finding *Karcher*'s second prong satisfied where justifications of regional integrity, the creation of minority voting districts, and incumbent protection were "all legitimate objectives that *on a proper showing* could justify minor population deviations")

(quoting *Karcher*) (emphasis added).

Second, accepting appellants' position would deprive district courts of their traditional fact-finding authority. Without the ability to assess the credibility and plausibility of a State's proffered justification, district courts would be forced to rubber-stamp any explanation whatsoever, thereby completely eviscerating the one-person, one-vote standard.

In sum, although respect for whole precincts might justify some deviation from equal population, there was no showing in this case either that this was a genuine concern in the map-drawing process or that the deviations were necessary to achieve the goal of avoiding split precincts.

B. Defendants Offered No Other Legitimate Justifications for the Population Deviations in Act 1.

Defendants at trial made only one serious attempt to justify the population deviations in Act 1. Given the plainly pretextual nature of that justification, appellants now attempt to sweep in a variety of additional rationales to save Act 1. *See* Jubelirer J.S. at 20-21 (listing (1) "the maintenance of two majority-minority districts," (2) "the protection of the senior member of Pennsylvania's congressional delegation," and (3) "the creation of an open seat in acknowledgment of the population growth in a particular part of Pennsylvania"). But while each of these justifications might, under the appropriate circumstances, satisfy the second prong of the *Karcher* test, their mere recitation hardly suffices.

The problem is that defendants failed to offer any testimony or evidence at trial suggesting how these

considerations supposedly made population deviations necessary. Irrespective of whether the stated concerns were elements of the redistricting process, appellants fail to recognize that even where the burden of justifying some deviation is minimal, *Karcher* requires more than a mere recitation of a few well-known policy considerations. In order for such considerations to function as *justifications*, it must be established that one or more of these considerations actually made deviation from equal population necessary. As the Court explained in *Karcher*, "the State must bear the burden of proving that *each* significant variance between districts was *necessary* to achieve some legitimate goal." *Karcher*, 462 U.S. at 731 (emphasis added).

The concerns identified by appellants might constitute legitimate justifications in theory, but, without some indication as to why they compel population deviations, they are not sufficient.[9] To accept appellants' argument would render the second prong of the *Karcher* test entirely meaningless, making the mere recital of recognized legitimate concerns an adequate response to the constitutional requirement of population equality.

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[9]Even if appellants' stated justifications actually affected each of the unequal districts in Act 1, appellants would still need to offer *some* evidence as to why, under *Karcher*, they necessarily lead to the deviations in question. However, on their face, the asserted post-hoc rationales do not even touch upon every unequal district in Act 1. Moreover, the plaintiffs' map that achieved perfect population equality while splitting no precincts also had two majority-minority districts and also protected the delegation's most senior member; obviously, the pursuit of the latter two objectives did not necessitate the deviations.

III. THE DISTRICT COURT'S REMEDY WAS BOTH APPROPRIATE AND DULY RESPECTFUL OF THE GENERAL ASSEMBLY'S PREROGATIVES IN REDISTRICTING.

Finally, appellants contend that the district court, in essentially remanding the map to the Pennsylvania General Assembly for redrawing consistent with the Constitution within a reasonable time, has somehow usurped the General Assembly's political authority. They claim that the court ordered the General Assembly to produce a constitutional map, characterizing that supposed directive as a "commandeering" of the legislative body in violation of the principles established in *New York v. United States*, 505 U.S. 144 (1992). *See* Jubelirer J.S. at 22. But that case is wholly inapposite.

The district court engaged in no impermissible commandeering. It simply stated that the defendants had three weeks in which to come back to court with a duly enacted, constitutional remedial map.

In so doing, the court rejected plaintiffs' argument that the court should impose its own remedy immediately. Recognizing the authority of *White v. Weiser*, 412 U.S. 783 (1973), and mindful that "reapportionment is primarily a matter for legislative consideration and determination," Jubelirer J.S. App. 14a (quoting *Weiser*), the district court refrained from any such direct intervention in the redistricting process. Far from commandeering the General Assembly, the district court deferred to the legislature's ability "to enact a constitutionally sound redistricting plan." *Id.* 15a. The district court's order, then, does no more than provide a framework and timetable for the constitutional exercise of the General Assembly's redistricting responsibilities.

CONCLUSION

For the foregoing reasons, this Court should summarily affirm the district court's decision enjoining implementation of Act 1.

Respectfully submitted,

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APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
PENNSYLVANIA

RICHARD VIETH, et al.,	:	
Plaintiffs	:	
	:	
v.	:	NO. 1:CV-01-
	:	2439
THE COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
Defendants	:	

TRANSCRIPT OF PROCEEDINGS
REAPPORTIONMENT NONJURY TRIAL

VOLUME 1
(Pages 1 through 107.)

BEFORE: HON. RICHARD L. NYGAARD, Judge
HON. WILLIAM H. YOHN, JR., Judge
HON. SYLVIA H. RAMBO, Judge
DATE: March 11, 2002, morning session
PLACE: Courtroom Number Three Federal Building
Harrisburg, Pennsylvania

* * * *

[Direct Examination of Mr. Robert Priest]

BY MR. SMITH:
Q And did you employ a computer in that hunt?
A Yes, I did. The original plan would be drawn on AutoBound. Once I had a common boundary and the list of voting districts on either side of the boundary, I used an Excel spreadsheet to do a massive number of calculations and comparisons that we needed to come up with the zero deviation.
Q Can you give us an example of the number of combinations of precinct moves that you could calculate?
A If I had a common boundary with the fifteen precincts on either side, which is not an uncommon number -- in fact, fairly frequent number -- fifteen precincts would give me then basically 105 combinations of two precincts. So I would have 120 alternatives on either side of the line for populations that could be shifted.
You compare one to the other. You basically are getting close to 14,000 options of precinct movements looking at one and two precinct moves. If you start looking at three and four precinct moves, the number increases geometrically.
Q Once you have generated 14,000 different options, what do you do?
A You hunt for the option that has the difference in population which is the number that your current plan is either high or low from zero deviation.

Q In this process, did you split any precincts?
A No.
Q Have you utilized that same methodology to reduce the population deviation to zero with other maps?
A I have done that twice with other maps.
Q At least in your experience, is that a process that can be applied to any draft district map?
A Easily.
(Gerlach (44th) Senate District in the Sixth Congressional was introduced as Plaintiffs Exhibit 2C.)
BY MR. SMITH:
Q Let me ask you to turn over to Plaintiff Exhibit 2C.
A (Witness complies.)
Q I ask you is this a map that you prepared?
A Yes, it is.
Q It is a little confusing with the three colors. Can you explain what is represented here?
A This is basically a map to show the new Sixth Congressional District in Act 1.
Q Where is the new Sixth Congressional district?
A It is in the southeastern suburban Philadelphia area.
Q Why don't you point it out to us on Act 1 referring to Exhibit 2?
A The Sixth District is there.
Q What does Exhibit 2C show about that district?

A Basically, it takes a look at that district and the 44th Senate District from the last decade to show how much of the old 44th Senate District is embedded in the new Sixth. The colors on this map are basically -- the brown color is the portion of the 44th Senate District that made it into Congressional District 6. The green is the remainder of Congressional District 6, and the yellow is the portion of the 44th Senate District that is not in Congressional District 6.

Q Who is the current Senator from the 44th --

A Senator --

Q You have got to let me finish my question.

A Sorry. Senator Gerlach.

Q And is there an incumbent Congressman who resides in this district, Congressional District 6?

A No, there is not.

MR. SMITH: I move the admission of 2C, Your Honor.

MR. KRILL: I object to it, Your Honor, on the grounds of relevance. I think with this exhibit and the witness's testimony to it, we have departed from any relevance to the remaining issue in this case; namely, the one person-one vote principle.

I think counsel are trying to work their way back to the partisan gerrymandering claims that were dismissed by

the Court.
JUDGE NYGAARD: Your thoughts?
MR. SMITH: Your Honor, we are clearly going to present substantial evidence on partisan gerrymandering because it is directly relevant to the justification that I intend to offer.
JUDGE NYGAARD: Overruled.
MR. KRILL: Your Honor, excuse me. So that I don't disrupt the trial, would the Court grant me a continuing objection on grounds of relevance with respect to that issue?
JUDGE NYGAARD: With respect to -- why don't you tell us which ones you object to? It is not going to be to disruptive. Just jump up, and we will take it that you object.
MR. KRILL: Tell me when I am behaving too much like a jack-in-the-box. I will be happy to.
THE COURT: We are very easy. Just move it along. Let's go.
MR. KRILL: Thank you.
(Murphy (37th) Senate District in the 18th Congressional was introduced as Plaintiffs Exhibit 2D.)
BY MR. SMITH:
Q Let me ask you, Mr. Priest, to turn it over to Exhibit 2D.

A Yes.
Q Is this a map you prepared?
A Yes, it is.
Q And what does it represent?
A This is the 18th Congressional District in southwestern Pennsylvania. And it shows the embedded 37th -- 1990's 37 Senate District which was the district of Senator Murphy which is entirely contained within the 18th Congressional.
Q Just for some context here, the 37th District is located where in relation to the City of Pittsburgh?
A The City of Pittsburgh is the large white area directly north of the brown on this map.
Q Senator Gerlach and Senator Murphy are from which party?
A Republican.
MR. SMITH: I move the admission of 2D, Your Honor.

* * * *

[Cross Examination of Dr. John Memmi]

BY MR. SMITH:
Q Good morning, Dr. Memmi.
A Good morning, Mr. Smith.
Q Paul Smith. Do you have any prior experience with redistricting prior to this decennial census, this round of redistricting?
A No, sir. This is my initial foray into the redistricting jungle.
Q You said I believe that you are not part of the political leadership that was making decisions with how the maps would be drawn; true?
A Is that a question?
Q Yes. Did you say that?
A I did say that. I am not a member of-- I am an executive with the team. And I mean that in pure sense of the word. I will explain what I mean by that. In the pure sense of the word, people tell me -- my supervisors tell me what to do, and I do it.

Q And, therefore, you don't have any knowledge of the reasons why particular districts took on the configurations that they took on in Act 1; is that right?
A As I said, I follow the directions of my supervisors, and I do what they say. I have no input into whether a given district looked like a circle or a square or a stripe or anything else.
Q So you wouldn't be able to tell the Court why somebody decided in District 6 to go from Lower Merion up to part of the City of Reading in one district; would you?
A No.
Q Now you presented --
A May I clarify that answer?
Q Please.
A Not with a responsible basis for doing so.
Q Are you saying you might have heard something in the hallway?
A We all hear all sorts of things. But my job, again, is to follow the instructions of my supervisors and to do what they ask me to do. And that is what I do.
Q You presented some statistics about the population deviations in various plans that were presented as proposals in the General Assembly last December. Do you recall that testimony?
A Yes. Could you speak up a little louder? I don't hear

very well.
Q I am doing my best. I will try to speak louder.
A Thank you very much. I appreciate that. Would you please reask your question?
Q I was just trying to recall your testimony regarding the population deviations of the various plans that were presented to the Legislature in December.
Do you recall that testimony?
A Yes, I presented testimony on five plans that made their way to the floors of the Chambers of the State Legislature.
Q One of those plans was a DeWeese Plan. You labeled it DeWeese Proposal?
A Yes, sir.
Q And that was a proposal 4848; is that correct?
A Yes, sir.
Q And you didn't present any statistics on the population deviations in Mr. DeWeese's other proposed Amendment 4849; is that right?
A That is correct.
Q Do you know what the population deviations in that proposal were?
A I do not, sir.
Q Let me ask you to turn to Defendant Exhibit 8 which is the Senate passed plan of last December.

MR. SMITH: I believe that is in Binder One, Your Honor?
A I need that binder, please
BY MR. SMITH:
Q It is Exhibit 8.
A Yes, sir. Thank you. Just give me a moment, please.
Q You mentioned in your testimony that the black dots represent the residences of incumbents in the plan; is that right?
A That's correct.
Q And in this plan that was passed by the State Senate in December, there are four districts that contain two incumbents in them; is that right?
A I would like to go back and count them, but I trust from your judgment.
Q Let's go through them and look at them. First, there is District 14 in the Pittsburgh area that contains both Mr. Coyne's residence and Mr. Doyle's residence?
A Yes.
Q Then there was District 12 in the southwestern part of the state?
A Yes.
Q That contains both Murtha and Mascara?
A That's right. Representative Mascara's is right along the border of Washington County. It is difficult to see, but

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you are correct.
Q There is District 6 in the eastern portion of the state that contains both Mr. Holden and Mr. Kanjorski's district?
A Correct, sir.
Q There is proposed District 13 which contains both Mr. Hoeffel and Mr. Borski's; is that right?
A You are right there.
Q Those are all Democratic Representatives?
A They are, sir.
Q There were no other pairings anywhere in this plan?
A That's correct. Just for clarification, I had no input on those pairings or anything else of a political nature.
Q Thank you for that clarification. Now let's look at -- let's turn then to your New Years' Eve process of reducing the population deviations in what became Act 1.

* * * *

[Cross Examination of Dr. John Memmi]

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Q So you are saying it is more complicated and difficult to work with census blocks because there are so many more of them?

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A No. I am saying they are easier to work with because there are more choices, the population increments are smaller. In this Commonwealth we in fact have census -- I am sorry we have precincts that range in population from zero, zero to upwards of 6,000.
Again let me repeat that. From zero to upwards of 6,000. It might be 5800, but it is at least 5,000. And that is a daunting task when you are trying to move things around with time constraints.
Q Did you hear Mr. Priest's testimony if he had fifteen precincts along one side of a boundary and fifteen precincts along the other side of the boundary, he could generate 14,000 options of precinct switches that would potentially produce an ideal population?
A I did hear Mr. Priest testify to that. On the face of it -- because I haven't done it myself, on the face of it, his approach makes sense to me as a scientist. I haven't tested it.
Q Now what you did instead was to move very, very small numbers of people at times. It is true, for example, isn't it, that there are census blocks that have two, three or four residences in them?
A There are plenty of empty census blocks. There are census blocks that have two, three or four people in them. There are census blocks that have -- if you go to my sheet,

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the handwritten sheet, one gets a sample of population sizes in census blocks. So there can be as many as a hundred. Census block population size is variable.

* * * *

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In the Supreme Court of the United States

GOVERNOR MARK S. SCHWEIKER, ET AL.,
Appellants

v.

RICHARD VIETH, ET AL.,
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIEF OPPOSING MOTION TO AFFIRM

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ARGUMENT

The District Court's Findings of Fact, That the Population Variances in Pennsylvania's Redistricting Plan Were Necessary to Further a Legitimate State Interest, Make it Clear That its Decision Is Incorrect.

Appellees, rather than defending the legal errors which we identified in the District Court's one person, one vote analysis, *see* J.S. at 8-14, instead suggest that we are attacking the District Court's findings of fact. Mot. to Aff. at 15-18. They are incorrect. Far from attacking the District Court's findings, we believe that those findings make it clear that the District Court's decision is incorrect, and compel its reversal. According to the appellees, the District Court found that "the sole proffered justification [for the nineteen-person population variance] was without factual support." Mot. to Aff. at 15. The District Court, however, found exactly the opposite.

The District Court specifically found that "the desire to avoid splitting precincts is a legitimate state interest which could justify a nineteen person deviation." J.S. App. 8a-9a. Moreover, the District Court unanimously acknowledged that the nineteen person variance was necessary to avoid further precinct splits. J.S. App. 10a (acknowledging that Act 1's zero deviation "twin" splits more precincts than Act 1); *accord* J.S. App. 18a (Yohn, J. dissenting) ("Neither party, even with the benefit of hindsight submitted a plan following the general contours of Act 1 which has not involved the spreading of more voting precincts").

The District Court majority rejected this justification not, as appellees now suggest, because it lacked factual support, but on the basis of a flawed legal analysis, marked by a lack of deference to state "goals,

policies and preferences," J.S. App. 18a (Yohn, J., dissenting), and by an excursion into questions of legislative motive which are wholly extraneous to the one person, one vote issue. We have already explained the shortcomings of the District Court's analysis in detail, *see* J.S. at 8-14, and will not repeat that material here. It is enough to say that the District Court, misunderstanding and misapplying *Karcher v. Daggett*, 462 U.S. 725 (1983), erroneously invalidated Pennsylvania's redistricting statute *despite* finding that its minimal population variances were necessary to further a legitimate state interest.

CONCLUSION

The Court should summarily reverse the district court's order, or in the alternative should note probable jurisdiction and set this appeal for plenary consideration.

Respectfully submitted,

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